

**EXHIBIT "B"**  
**TO ARTICLES OF ARRANGEMENT OF**  
**ALLELIX BIOPHARMACEUTICALS INC.**

**CERTIFIED COPY OF THE**  
**ORDER OF THE COURT**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE JUSTICE GROUND ) FRIDAY, THE 17<sup>TH</sup>  
)  
) DAY OF DECEMBER, 1999

**IN THE MATTER OF SECTION 182 OF THE *BUSINESS CORPORATIONS ACT*  
(ONTARIO) R.S.O. 1990, c.B.16, AS AMENDED**

**ON BEHALF OF:**

**1380390 ONTARIO INC. AND ALLELIX BIOPHARMACEUTICALS INC.**

**APPLICANTS**

**APPLICATION BY 1380390 ONTARIO INC. AND ALLELIX  
BIOPHARMACEUTICALS INC. PURSUANT TO SECTION 182 OF THE *BUSINESS  
CORPORATIONS ACT*, R.S.O. 1990, c.B.16 IN RESPECT OF AN ARRANGEMENT  
INVOLVING THE APPLICANTS AND NPS PHARMACEUTICALS, INC.**

**ORDER**

**THIS APPLICATION** was heard this day at 393 University Avenue, Toronto, Ontario, in the presence of counsel for the Applicants and counsel for NPS Pharmaceuticals, Inc., no one appearing in person or on behalf of any other person, although proper notice of the Application was given, and the terms of the Order of this Court, dated November 2, 1999, having been complied with, as appears from the Affidavit of Jeff Carrabs, sworn December 7, 1999, the Affidavit of Paul J. Van Damme, sworn on December 16, 1999, the Affidavit of Cheryl Robb, sworn on December 16, 1999 and the Affidavit of Robert K. Mason, sworn on December 16, 1999.

**ON READING** the Notice of Application and the evidence filed by the Applicants, and on hearing the submissions of counsel for the Applicants and counsel for NPS Pharmaceuticals, Inc.

- (ix) *Number of Directors.* The number of directors of Amalco shall be 3 and thereafter shall be such number of not less than one and not more than ten as the shareholders of Amalco may from time to time determine by special resolution or, if empowered to do so by special resolution, as the directors of Amalco may from time to time determine;
- (x) *Initial Directors.* The directors shall be James U. Jensen, James Howard-Tripp and Paul J. Van Damme, a majority of whom are Canadian residents, until their respective successors have been duly elected or appointed; and
- (xi) *Stated Capital.* For the purposes of the OBCA, the aggregate stated capital of the issued and outstanding common shares in the capital of Amalco immediately after the Amalgamation shall be equal to the aggregate amount of the stated capital attributable to the common shares in the capital of Allelix immediately before the Amalgamation and the aggregate stated capital of the issued and outstanding preferred shares in the capital of Amalco, if any, immediately after the Amalgamation shall be equal to the aggregate amount of the stated capital attributed to the preferred shares in the capital of Allelix, if any, immediately before the Amalgamation.

## 2.3

### Elections

- (a) Each Person who, at or prior to the Election Deadline, is a holder of record of Allelix Common Shares will be entitled, with respect to all or a portion of such shares, to make an election at or prior to the Election Deadline to receive Exchangeable Shares or NPS Common Shares, or a combination thereof, in exchange for such holder's Allelix Common Shares on the basis set forth herein and in the Letter of Transmittal and Election Form; provided that, notwithstanding anything to the contrary herein, a holder of Allelix Common Shares who is not a Canadian Resident will not be entitled to elect to receive Exchangeable Shares and any such election otherwise made by any such holder shall be and be deemed to be an election to receive a NPS Elected Share.
- (b) Each Person who, at or prior to the Election Deadline, is a holder of record of Allelix Common Shares and who is Canadian Resident, other than a holder who is exempt from tax under the ITA, who has elected (or is deemed to have elected) to receive Exchangeable Shares shall be entitled to make an income tax election pursuant to subsection 85(1) of the ITA or, if the holder is a partnership, subsection 85(2) of the ITA (and in each case, where applicable, the analogous provisions of provincial income tax law) with respect to the transfer of its Allelix Common Shares to NPS Allelix Inc. by providing two signed copies of the necessary prescribed election forms to the Depositary within 90 days following the Effective Date, duly completed with the details of the number of Allelix Common Shares transferred and the applicable agreed amounts for the purposes

of such elections. Thereafter, subject to the election forms being correct and complete and complying with the provisions of the ITA (and applicable provincial income tax law), the forms will be signed by NPS Allelix Inc. and returned to such holder within 30 days after the receipt thereof by the Depositary for filing with Revenue Canada (or the applicable provincial taxing authority). NPS Allelix Inc. will not be responsible for the proper completion of any election form and, except for NPS Allelix Inc.'s obligation to return duly completed election forms which are received by the Depositary within 90 days of the Effective Date, within 30 days after the receipt thereof by the Depositary, NPS Allelix Inc. will not be responsible for any taxes, interest or penalties resulting from the failure by a holder of Allelix Common Shares to properly complete or file the election forms in the form and manner and within the time prescribed by the ITA (or any applicable provincial legislation). In its sole discretion, NPS Allelix Inc. may choose to sign and return an election form received more than 90 days following the Effective Date, but NPS Allelix Inc. will have no obligation to do so.

#### **2.4 Adjustments to Exchange Ratio**

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into NPS Common Shares or Allelix Common Shares other than stock dividends paid in lieu of ordinary course dividends), reorganization, recapitalization or other like change with respect to NPS Common Shares or Allelix Common Shares occurring after the date of the Arrangement Agreement and prior to the Effective Time.

### **ARTICLE 3 RIGHTS OF DISSENT**

#### **3.1 General**

Notwithstanding Article 2, each holder of Allelix Common Shares is entitled to dissent from the Arrangement Resolution and to be paid by Allelix the fair value of the Allelix Common Shares held by such holder in respect of which such holder dissents, determined as of the day before the date on which the Arrangement Resolution is passed (and in the event the Arrangement becomes effective) (the "**Dissent Right**"), provided that (i) such holder complies with Section 190 of the CBCA, and (ii) such holder shall not have voted any of its Allelix Common Shares in favour of the Arrangement Resolution at the Allelix Meeting in person or by proxy.

#### **3.2 Treatment of Dissenting Shareholders**

A holder of Allelix Common Shares who:

20084507-022802

(a) properly exercises the Dissent Right by complying with all of the procedures (the "**Dissent Procedures**") required to be complied with by a Dissenting Shareholder, will:

- (i) be bound by the provisions of this Article 3,
- (ii) be deemed not to have participated in the Arrangement, and
- (iii) cease to have any rights as a holder of Allelix Common Shares other than the right to be paid the fair value of the Allelix Common Shares by Allelix in accordance with the Dissent Procedures, or

(b) seeks to exercise the Dissent Right, but:

- (i) who for any reason does not properly fulfil each of the Dissent Procedures required to be completed by a Dissenting Shareholder, or
- (ii) subsequent to giving its written notice of dissent provided for in Section 190 of the CBCA in respect of the Arrangement Resolution, acts inconsistently with such dissent,

will be deemed to have participated in the Arrangement on the same basis as each holder of Allelix Common Shares and shall receive such number of NPS Common Shares or Exchangeable Shares as it is entitled to on the basis determined in accordance with Article 2;

and a holder of Allelix Common Shares or Allelix Preferred Shares who:

(c) validly exercises the rights of dissent provided for under Section 190 of the CBCA in respect of the Continuance Resolution will (in the event the Continuance becomes effective):

- (i) be deemed not to have participated in the Continuance or the Arrangement, and
- (ii) cease to have any rights as a holder of Allelix Common Shares or Allelix Preferred Shares, as the case may be, other than the right to be paid the fair value of such shares by Allelix in accordance with Section 190 of the CBCA, or

(d) seeks to exercise the rights of the dissent provided for under Section 190 of the CBCA in respect of the Continuance Resolution, but:

- (i) who for any reason does not properly fulfil each of the dissent procedures required to be completed by a dissenting shareholder; or

- (ii) subsequent to giving its notice of dissent as provided for under Section 190 of the CBCA, acts inconsistently with such dissent,

will be deemed to have participated in the Continuance and the Arrangement on the basis that they had not dissented and shall receive such number of NPS Common Shares or Exchangeable Shares as they are entitled to on the basis determined in accordance with Article 2.

## **ARTICLE 4**

### **CERTIFICATES AND FRACTIONAL SHARES**

#### **4.1 Issuance of Certificates Representing Exchangeable Shares**

At or promptly after the Effective Time, NPS Allelix Inc. shall deposit with the Depositary, for the benefit of the holders of Allelix Common Shares who will receive Exchangeable Shares in connection with the Arrangement, certificates representing that number of whole Exchangeable Shares to be delivered pursuant to Section 2.2 upon the exchange of Allelix Common Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented Allelix Common Shares that were exchanged for Exchangeable Shares under the Arrangement, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the OBCA and the articles and by-laws of Allelix and such additional documents and instruments as the Depositary may reasonably require the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded up to the nearest whole number) of Exchangeable Shares which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to Section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Allelix Common Shares that is not registered in the transfer records of Allelix, a certificate representing the proper number of Exchangeable Shares may be issued to the transferee if the certificate representing such Allelix Common Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.1, each certificate which immediately prior to the Effective Time represented Allelix Common Shares that were exchanged for Exchangeable Shares shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing Exchangeable Shares as contemplated by this Section 4.1, (ii) a cash payment in lieu of any fractional Exchangeable Shares as contemplated by Section 4.4 and (iii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to Exchangeable Shares as contemplated by Section 4.3.

#### **4.2 Issuance of Certificates representing NPS Common Shares**

At or promptly after the Effective Time, NPS Allelix Inc. shall deposit with the Depositary, for the benefit of the holders of Allelix Common Shares who will receive NPS Common Shares in connection with the Arrangement, certificates representing that whole

10034507 0228002

number of NPS Common Shares to be delivered pursuant to Section 2.2 upon the exchange of Allelix Common Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged for NPS Common Shares under the Arrangement, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the OBCA, the articles and by-laws of Allelix and such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded up to the nearest whole number) of NPS Common Shares which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to Section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Allelix Common Shares which is not registered in the transfer records of Allelix, a certificate representing the proper number of NPS Common Shares may be issued to the transferee if the certificate representing such Allelix Common Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.2, each certificate which immediately prior to the Effective Time represented one or more outstanding Allelix Common Shares that were exchanged for NPS Common Shares shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing NPS Common Shares as contemplated by this Section 4.2, (ii) a cash payment in lieu of any fractional NPS Common Shares as contemplated by Section 4.4 and (iii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to NPS Common Shares as contemplated by Section 4.3.

#### **4.3 Distributions with Respect to Unsurrendered Certificates**

No dividends or other distributions declared or made after the Effective Time with respect to Exchangeable Shares or NPS Common Shares with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2, and no interest shall be earned or payable on these proceeds, unless and until the holder of such certificate shall surrender such certificate in accordance with Section 4.1 or 4.2. Subject to applicable law and to Section 4.6, at the time of such surrender of any such certificate (or, in the case of clause (ii) below, at the appropriate payment date), there shall be paid to the holder of the certificates representing Allelix Common Shares, as the case may be, without interest, (i) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to the Exchangeable Shares or NPS Common Shares, as the case may be, to which such holder is entitled pursuant hereto and (ii) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and a payment date subsequent to surrender payable with respect to such Exchangeable Shares or NPS Common Shares, as the case may be.

#### **4.4 No Fractional Shares**

No certificates representing fractional Exchangeable Shares or fractional NPS Common Shares shall be issued upon the surrender for exchange of certificates pursuant to Section 4.1 or 4.2 and no dividend, stock split or other change in the capital structure of NPS Allelix Inc. shall relate to any such fractional security and such fractional interests shall not entitle the owner thereof to exercise any rights as a security holder of NPS Allelix Inc.. In lieu of any such fractional securities, each Person otherwise entitled to a fractional interest in an Exchangeable Share or to a fractional interest in a NPS Common Share will receive a share certificate evidencing that number of shares to which such Person is otherwise entitled, rounded up to the nearest whole number.

#### **4.5 Lost Certificates**

In the event that any certificate which immediately prior to the Effective Time represented one or more outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, any cash pursuant to Section 4.4 and/or one or more certificates representing one or more Exchangeable Shares or NPS Common Shares (and any dividends or distributions with respect thereto) deliverable in accordance with such holder's Letter of Transmittal and Election Form. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom certificates representing Exchangeable Shares or NPS Common Shares are to be issued shall, as a condition precedent to the issuance thereof, give a bond satisfactory to NPS Allelix Inc., NPS and their respective transfer agents in such sum as NPS Allelix Inc. or NPS may direct or otherwise indemnify NPS Allelix Inc. and NPS in a manner satisfactory to NPS Allelix Inc. and NPS against any claim that may be made against NPS Allelix Inc. or NPS with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **4.6 Extinction of Rights**

Any certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2 that is not deposited with all other instruments required by Section 4.1 or 4.2 on or prior to the date of the notice referred to in Section 7.2 of the Exchangeable Share Provisions shall cease to represent a claim or interest of any kind or nature as a shareholder of NPS Allelix Inc. or NPS. On such date, the Exchangeable Shares or NPS Common Shares to which the former holder of the certificate referred to in the preceding sentence was ultimately entitled shall be deemed to have been surrendered for no consideration to NPS Allelix Inc. or NPS, as the case may be, together with all entitlements to dividends, distributions and interest in respect thereof held for such former holder. None of NPS, NPS Allelix Inc., NPS Holdings or the Depositary shall be liable to any person in respect of any NPS Common Shares or Exchangeable Shares (or dividends, distributions and interest in respect thereof) delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

20080720 02:28:02



4.7

**Withholding Rights**

NPS Allelix Inc., NPS Holdings, NPS and the Depositary shall be entitled to deduct and withhold from any dividend or consideration otherwise payable pursuant to transactions contemplated by this Agreement to any holder of Allelix Common Shares, NPS Common Shares or Exchangeable Shares such amounts as NPS Allelix Inc., NPS Holdings, NPS or the Depositary is required or permitted to deduct and withhold with respect to such payment under the ITA, the United States *Internal Revenue Code of 1986* or any provision of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, NPS Allelix Inc., NPS Holdings, NPS and the Depositary are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to NPS Allelix Inc., NPS Holdings, NPS or the Depositary, as the case may be, to enable it to comply with such deduction or withholding requirement and NPS Allelix Inc., NPS Holdings, NPS or the Depositary shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale.

**ARTICLE 5**

**CERTAIN RIGHTS OF NPS HOLDINGS TO ACQUIRE EXCHANGEABLE SHARES**

5.1

**NPS Holdings Liquidation Call Right**

- (a) NPS Holdings shall have the overriding right (the "**Liquidation Call Right**"), in the event of and notwithstanding the proposed liquidation, dissolution or winding-up of NPS Allelix Inc. pursuant to Article 5 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is an affiliate of NPS) on the Liquidation Date all but not less than all of the Exchangeable Shares held by each such holder on payment by NPS Holdings of an amount per share (the "**Liquidation Call Purchase Price**") equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Liquidation Date, which shall be satisfied in full by NPS Holdings causing to be delivered to such holder one NPS Common Share, plus any Dividend Amount for each Exchangeable Share held by such holder. In the event of the exercise of the Liquidation Call Right by NPS Holdings, each holder shall be obligated to sell all the Exchangeable Shares held by the holder to NPS Holdings on the Liquidation Date on payment by NPS Holdings to the holder of the Liquidation Call Purchase Price for each such share, and NPS Allelix Inc. shall have no obligation to pay any Liquidation Amount to the holders of such shares so purchased by NPS Holdings.

- (b) To exercise the Liquidation Call Right, NPS Holdings must notify the Trustee, as agent for the holders of Exchangeable Shares, and NPS Allelix Inc. of NPS Holdings's intention to exercise such right at least 45 days before the Liquidation Date in the case of a voluntary liquidation, dissolution or winding-up of NPS Allelix Inc. and at least five Business Days before the Liquidation Date in the case of an involuntary liquidation, dissolution or winding-up of NPS Allelix Inc.. The Trustee will notify the holders of Exchangeable Shares as to whether or not NPS Holdings has exercised the Liquidation Call Right forthwith after the expiry of the period during which the same may be exercised by NPS Holdings. If NPS Holdings exercises the Liquidation Call Right, then on the Liquidation Date, NPS Holdings will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Liquidation Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Liquidation Call Right, NPS Holdings shall deposit with the Transfer Agent, on or before the Liquidation Date, certificates representing the aggregate number of NPS Common Shares deliverable by NPS Holdings and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings representing the aggregate Dividend Amount in payment of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. Provided that NPS Holdings has complied with the immediately preceding sentence, on and after the Liquidation Date the rights of each holder of Exchangeable Shares will be limited to receiving such holder's proportionate part of the total Liquidation Call Purchase Price payable by NPS Holdings upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Liquidation Date be considered and deemed for all purposes to be the holder of the NPS Common Shares to which it is entitled. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the governing corporate statute and the by-laws of NPS Allelix Inc. and such additional documents and instruments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Transfer Agent on behalf of NPS Holdings shall deliver to such holder, certificates representing the NPS Common Shares to which the holder is entitled and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings in payment of the remaining portion, if any, of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. If NPS Holdings does not exercise the Liquidation Call Right in the manner described above, on the Liquidation Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the Liquidation Amount otherwise payable by NPS Allelix Inc. in connection with the liquidation,

10084507.022802

dissolution or winding-up of NPS Allelix Inc. pursuant to Article 5 of the Exchangeable Share Provisions.

5.2

**NPS Holdings Redemption Call Right**

In addition to NPS Holdings's rights contained in the Exchangeable Share Provisions, including, without limitation, the Retraction Call Right (as defined in the Exchangeable Share Provisions), NPS Holdings shall have the following rights in respect of the Exchangeable Shares:

- (a) NPS Holdings shall have the overriding right (the "**Redemption Call Right**"), notwithstanding the proposed redemption of the Exchangeable Shares by NPS Allelix Inc. pursuant to Article 7 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is an affiliate of NPS) on the Redemption Date all but not less than all of the Exchangeable Shares held by each such holder on payment by NPS to each holder of an amount per Exchangeable Share (the "**Redemption Call Purchase Price**") equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Redemption Date, which shall be satisfied in full by NPS Holdings causing to be delivered to such holder one NPS Common Share, plus any Dividend Amount for each Exchangeable Share held by such holder. In the event of the exercise of the Redemption Call Right by NPS Holdings, each holder shall be obligated to sell all the Exchangeable Shares held by the holder to NPS Holdings on the Redemption Date on payment by NPS Holdings to the holder of the Redemption Call Purchase Price for each such share, and NPS Allelix Inc. shall have no obligation to redeem, or to pay any Dividend Amount in respect of, such shares so purchased by NPS Holdings.
- (b) To exercise the Redemption Call Right, NPS Holdings must notify the Trustee, as agent for the holders of Exchangeable Shares, and NPS Allelix Inc. of NPS Holdings's intention to exercise such right at least 60 days before the Redemption Date, except in the case of a redemption occurring as a result of a NPS Control Transaction, an Exchangeable Share Voting Event or an Exempt Exchangeable Share Voting Event (each as defined in the Exchangeable Share Provisions), in which case NPS Holdings shall so notify the Trustee and NPS Allelix Inc. on or before the Redemption Date. The Trustee will notify the holders of the Exchangeable Shares as to whether or not NPS Holdings has exercised the Redemption Call Right forthwith after the expiry of the period during which the same may be exercised by NPS Holdings. If NPS Holdings exercises the Redemption Call Right, on the Redemption Date NPS Holdings will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Redemption Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Redemption Call Right, NPS Holdings shall deposit with the Trustee, on or

before the Redemption Date, certificates representing the aggregate number of NPS Common Shares deliverable by NPS Holdings and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings representing the aggregate Dividend Amount in payment of the total Redemption Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. Provided that NPS Holdings has complied with the immediately preceding sentence, on and after the Redemption Date the rights of each holder of Exchangeable Shares will be limited to receiving such holder's proportionate part of the total Redemption Call Purchase Price payable by NPS Holdings upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Redemption Date be considered and deemed for all purposes to be the holder of the NPS Common Shares to which it is entitled. Upon surrender to the Trustee of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the governing corporate statute and the by-laws of NPS Allelix Inc. and such additional documents and instruments as the Trustee may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Trustee on behalf of NPS Holdings shall deliver to such holder, certificates representing the NPS Common Shares to which the holder is entitled and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings in payment of the remaining portion, if any, of the total Redemption Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. If NPS Holdings does not exercise the Redemption Call Right in the manner described above, on the Redemption Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the redemption price otherwise payable by NPS Allelix Inc. in connection with the redemption of the Exchangeable Shares pursuant to Article 7 of the Exchangeable Share Provisions.

## **ARTICLE 6 AMENDMENTS**

### **6.1 Amendments to Plan of Arrangement**

Allelix reserves the right to amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) consented to by NPS, (iii) filed with the Court and, if made following the Allelix Meeting, approved by the Court and (iv) communicated to holders of Allelix Common Shares, Allelix Options, Allelix Warrants and Allelix Preferred Shares, if and as required by the Court.

Any amendment, modification or supplement to this Plan of Arrangement may be proposed by Allelix at any time prior to the Allelix Meeting (provided that NPS shall have consented thereto) with or without any other prior notice or communication, and if so proposed

10084507.022802

Exchangeable Shares and each holder of Allelix Warrants who is not a Canadian Resident will be entitled to receive NPS Common Shares;

- (e) in accordance with the terms of the Allelix Options, after the Effective Time, a holder of Allelix Options shall be entitled, upon the exercise of such options, to receive in lieu of the number of Allelix Common Shares to which such holder was theretofore entitled to receive upon such exercise, that aggregate number of NPS Common Shares that such holder would have been entitled to receive under the Plan of Arrangement if such holder had been the registered holder of that number of Allelix Common Shares that such holder was theretofore entitled to receive if all such holder's Allelix Options had been exercised immediately prior to the Effective Time;
- (f) the Allelix Preferred Shares shall, in addition to and subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares as a Class, have attached thereto, and be subject to, the rights, privileges, restrictions and conditions set forth in Appendix II;
- (g) NPS shall issue to and deposit with the Trustee the Special Voting Share, in consideration of the payment to NPS of U.S. \$1, to be thereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the holders of the Exchangeable Shares in accordance with the Voting and Exchange Trust Agreement;
- (h) the right and obligation of Johnson & Johnson Development Corporation ("J&J") (or any successor) to purchase Allelix Common Shares pursuant to section 1.2 of that certain stock purchase agreement dated October 30, 1998 as amended, between Allelix and J&J shall be deemed to be and shall become the right and obligation of J&J (or any successor) to purchase, on April 30, 2000, that number of NPS Common Shares determined by dividing U.S.\$2,000,000 by the Current Market Price of the NPS Common Shares (which in any event shall not be more than U.S.\$27.79), without any further act or formality on the part of the parties, all as more specifically provided in the Stock Purchase Agreement which shall remain in full force and effect except as amended pursuant to this Plan of Arrangement; and
- (i) Allelix and 1380390 shall amalgamate (the "Amalgamation") and continue as one corporation under the OBCA ("Amalco"), with the effect described below unless and until otherwise determined in the manner required by law or by Amalco, its directors or shareholders, and the following provisions shall apply:
  - (i) *Name.* The name of Amalco shall be NPS Allelix Corp.;
  - (ii) *Cancellation of Shares.* All of the outstanding shares in the capital of 1380390 shall be cancelled without any repayment of capital in respect thereof;

- (iii) *By-laws.* The by-laws of Amalco shall be the same as the by-laws of Allelix;
- (iv) *No Distribution.* No securities shall be issued and no asset shall be distributed by Amalco in connection with the Amalgamation;
- (v) *Registered Office.* The address of the registered office of Amalco shall be 6850 Goreway Drive, Mississauga, Ontario, L4V 1V7;
- (vi) *Business and Powers.* There shall be no restrictions on the business that Amalco may carry on or on the powers it may exercise;
- (vii) *Authorized Share Capital.* Amalco shall be authorized to issue an unlimited number of common shares and an unlimited number of preferred shares having the rights, privileges, restrictions and conditions attaching to the common shares and preferred shares of Allelix and which shall be set forth in Appendix III to this Plan of Arrangement attached hereto at the time of the filing of articles of arrangement in respect of this Plan of Arrangement with the Director;
- (viii) *Share Restrictions.*
  - A. *Transfer.* The transfer of shares in the capital of Amalco shall be restricted in that no share shall be transferred without either (i) the consent of the directors of Amalco expressed by resolution passed by the board of directors or by an instrument or instruments in writing signed by all of such directors, or (ii) the consent of the holders of shares to which are attached more than 50% of the voting rights attaching to all shares for the time being outstanding entitled to vote at such time expressed by a resolution passed by such shareholders at a meeting duly called and constituted for that purpose or by an instrument or instruments in writing signed by all of such shareholders;
  - B. *Number of Shareholders.* The number of shareholders of Amalco, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of Amalco, were, while in that employment, and have continued after termination of that employment to be, shareholders of Amalco, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder; and
  - C. *Public Distributions.* Any invitation to the public to subscribe for any securities of Amalco is prohibited;

10084507.022802

**"Voting and Exchange Trust Agreement"** means an agreement to be made among NPS, NPS Allelix Inc. and the Trustee in connection with the Plan of Arrangement;

**"1380390"** means 1380390 Ontario Inc., a company incorporated under the OBCA as a wholly-owned subsidiary of Allelix.

## **1.2 Sections and Headings**

The division of this Plan of Arrangement into sections and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to a section or an appendix refers to the specified section of or appendix to this Plan of Arrangement.

## **1.3 Number, Gender and Persons**

In this Plan of Arrangement, unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing any gender include all genders.

# **ARTICLE 2 ARRANGEMENT**

## **2.1 Binding Effect**

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on (i) Allelix and 1380390, (ii) NPS, NPS Holdings and NPS Allelix Inc., (iii) all holders of Allelix Common Shares, (iv) all holders of Allelix Preferred Shares, (v) all holders of Exchangeable Shares, and (vi) all holders of Allelix Options and Allelix Warrants.

## **2.2 Arrangement**

Commencing at the Effective Time, the following shall occur and shall be deemed to occur in the following order without any further act or formality:

- (a) each NPS Elected Share will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable NPS Common Share equal to the Exchange Ratio, and the name of each such holder will be removed from the register of holders of Allelix Common Shares and added to the register of holders of NPS Common Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;
- (b) each Exchangeable Elected Share will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable Exchangeable Share equal to the Exchange Ratio, and the name of each such holder will be removed from the

register of holders of Allelix Common Shares and added to the register of holders of Exchangeable Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;

- (c) each Allelix Common Share in respect of which a duly completed Letter of Transmittal and Election Form has not been deposited with the Depositary on or prior to the Election Deadline (other than (i) Allelix Common Shares held by Dissenting Shareholders who are ultimately entitled to be paid the fair value of the Allelix Common Shares held by them and (ii) Allelix Common Shares held by NPS or any affiliate thereof which shall not be exchanged under this Arrangement and shall remain outstanding as Allelix Common Shares held by NPS or any affiliate thereof), (A) in the case of a holder of Allelix Common Shares whose address as shown in the register of Allelix Common Shares as of the close of business (Toronto time) on the day preceding the Effective Date is in Canada will be deemed to be an Exchangeable Elected Share and will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for that number of fully paid and non-assessable Exchangeable Shares equal to the Exchange Ratio, and the name of each such holder of Allelix Common Shares will be removed from the register of holders of Allelix Common Shares and added to the register of holders of Exchangeable Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof, and (B) in the case of a holder of Allelix Common Shares whose address as shown in the register of Allelix Common Shares as of the close of business (Toronto time) on the day preceding the Effective Date is not in Canada will be deemed to be a NPS Elected Share and will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable NPS Common Share equal to the Exchange Ratio, and the name of each such holder will be removed from the register of holders of Allelix Common Shares and added to the register of holders of NPS Common Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;
- (d) in accordance with the terms of the Allelix Warrants, after the Effective Time, a holder of Allelix Warrants shall be entitled, upon the exercise of such warrants, to receive in lieu of the number of Allelix Common Shares to which such holder was theretofore entitled to receive upon such exercise, that aggregate number of Exchangeable Shares or NPS Common Shares, as applicable, that such holder would have been entitled to receive under the Plan of Arrangement if such holder had been the registered holder of that number of Allelix Common Shares that such holder was theretofore entitled to receive if all such holder's Allelix Warrants had been exercised immediately prior to the Effective Time. Each holder of Allelix Warrants who is a Canadian Resident will be entitled to receive

10084507.022802



any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

**"holders"** means, when used with reference to the Allelix Common Shares or the Allelix Preferred Shares, the holders of such shares shown from time to time in the registers maintained by or on behalf of Allelix in respect of the such shares and, when used with reference to the Exchangeable Shares, means the holders of Exchangeable Shares shown from time to time in the register maintained by or on behalf of NPS Allelix Inc. in respect of the Exchangeable Shares;

**"Interim Order"** means the interim order of the Court, as the same may be amended, in respect of the Arrangement, as contemplated by Section 2.2 of the Arrangement Agreement;

**"ITA"** means the *Income Tax Act* (Canada), as amended;

**"Letter of Transmittal and Election Form"** means the letter of transmittal and election form for use by holders of Allelix Common Shares, in the form accompanying the Circular;

**"Liquidation Amount"** has the meaning ascribed thereto in the Exchangeable Share Provisions;

**"Liquidation Call Purchase Price"** has the meaning ascribed thereto in Section 5.1(a);

**"Liquidation Call Right"** has the meaning ascribed thereto in Section 5.1(a);

**"Liquidation Date"** has the meaning ascribed thereto in the Exchangeable Share Provisions;

**"Meeting Date"** means the date of the Allelix Meeting;

**"Nasdaq"** means the National Association of Securities Dealers Automated Quotation System;

**"NPS"** means NPS Pharmaceuticals, Inc.;

**"NPS Allelix Inc."** means 3035387 Nova Scotia Limited, a company limited by shares formed under the *Companies Act* (Nova Scotia) as a wholly-owned subsidiary of NPS Holdings;

**"NPS Common Shares"** means the shares of common stock in the capital of NPS;

**"NPS Control Transaction"** has the meaning ascribed thereto in the Exchangeable Share Provisions;

**"NPS Elected Share"** means any Allelix Common Share (other than an Allelix Common Share held by NPS or an affiliate thereof) held by a Canadian Resident that the holder thereof shall have elected, in a duly completed Letter of Transmittal and Election Form deposited with the Depositary no later than the Election Deadline, to transfer to NPS Allelix Inc. under the Arrangement for a fraction of a NPS Common Share equal to the Exchange Ratio, or that is deemed to be an NPS Elected Share pursuant to Sections 2.2(c) or 2.3(a);

**"NPS Holdings"** means NPS Holdings Company, an unlimited liability company formed under the *Companies Act* (Nova Scotia) as a wholly-owned subsidiary of NPS;

**"NPS Trading Price"** means the average of the bid and ask prices of NPS Common Shares on Nasdaq during a period of twenty consecutive trading days ending on the Business Day immediately preceding the Effective Date;

**"OBCA"** means the *Business Corporations Act* (Ontario), as amended;

**"Person"** includes any individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, Government Entity, syndicate or other entity, whether or not having legal status;

**"Preference Shares"** means the preference shares in the capital of NPS Allelix Inc. having substantially the rights, privileges, restrictions and conditions set forth in Appendix II hereto;

**"Redemption Call Purchase Price"** has the meaning ascribed thereto in Section 5.2(a);

**"Redemption Call Right"** has the meaning ascribed thereto in Section 5.2(a);

**"Redemption Date"** has the meaning ascribed thereto in the Exchangeable Share Provisions;

**"Special Voting Share"** means the share of NPS Special Voting Preferred Stock having substantially the rights, privileges, restrictions and conditions described in the Voting and Exchange Trust Agreement;

**"Transfer Agent"** means the transfer agent to be chosen by NPS and Allelix to act as transfer agent of the Exchangeable Shares;

**"Trustee"** means the trustee to be chosen by NPS and Allelix to act as trustee under the Voting and Exchange Trust Agreement, being a corporation organized and existing under the laws of Canada and authorized to carry on the business of a trust company in all the provinces of Canada, and any successor trustee appointed under the Voting and Exchange Trust Agreement;

20084507.032802

**SCHEDULE "A"**  
**PLAN OF ARRANGEMENT**  
**UNDER SECTION 182**  
**OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO)**

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions**

In this Plan of Arrangement, unless there is something in the subject matter or context inconsistent therewith, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

**"Allelix"** means Allelix Biopharmaceuticals Inc.;

**"Allelix Common Shares"** means the common shares of Allelix;

**"Allelix Meeting"** means the special meeting of the holders of Allelix Shareholders, as ordered by the Interim Order, and all adjournments and postponements thereof, to, among other things, consider and, if determined advisable, approve the re-issuance and the variance of the exercise period of certain options granted to insiders of Allelix, to consider and, if determined advisable, approve the continuance of Allelix under the OBCA, and to consider and, if determined advisable, approve the Arrangement;

**"Allelix Options"** means the options to purchase Allelix Common Shares issued from time to time prior to the date hereof pursuant to the Allelix Stock Option Plan;

**"Allelix Preferred Shareholder"** means the registered holder of Allelix Preferred Shares;

**"Allelix Preferred Shares"** means the preferred share, Series 1 shares of Allelix;

**"Allelix Shareholders"** means collectively the Allelix Common Shareholders and the Allelix Preferred Shareholder;

**"Allelix Warrants"** means the warrants to purchase Allelix Common Shares issued from time to time;

**"Arrangement"** means an arrangement under Section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the Arrangement Agreement or Article 6 of this Plan of Arrangement or made at the direction of the Court in the Final Order;

1. **THIS COURT ORDERS** that the Arrangement proposed by the Applicants under section 182 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, and adopted by the shareholders of the Applicants in the form attached hereto as Schedule "A", is hereby approved.

*[Signature]*  
C. J. Macgregor

ENTERED AT/INSCRIT À TORONTO  
ON/BOOK NO:  
LE/DANS LE REGISTRE NO

DEC 17 1999

PER/PAR: *[Signature]*

THIS IS TO CERTIFY THAT  
THIS DOCUMENT, EACH PAGE  
OF WHICH IS STAMPED WITH  
THE SEAL OF THE  
COURT (GENERAL  
AT TORONTO, IS  
COPY OF THE  
ON FILE IN THE

LA PRÉSENTE ATTESTE QUE CE  
DOCUMENT, DONT CHACUNE  
DES PAGES EST REVÊTUE DU  
SCAUX DE LA COUR DE  
DIVISION GÉNÉRALE)  
EST UNE COPIÉ  
DU DOCUMENT  
DANS CE BUREAU

DATED AT TORONTO  
FAIT À TORONTO LE

21 DEC 19 99

*[Signature]*  
LOCAL REGISTRAR

GREFFIER LOCAL



10084507.022802

The restrictions in Sections 4.1(a), (b), (c) and (d) above shall not apply if all dividends on the outstanding Exchangeable Shares corresponding to dividends declared and paid to date on the NPS Common Shares shall have been declared and paid on the Exchangeable Shares.

## ARTICLE 5 DISTRIBUTION ON LIQUIDATION

5.1 In the event of the liquidation, dissolution or winding-up of the Company or any other distribution of the assets of the Company among its shareholders for the purpose of winding up its affairs, a holder of Exchangeable Shares shall be entitled, subject to applicable law, to receive from the assets of the Company in respect of each Exchangeable Share held by such holder on the effective date (the "**Liquidation Date**") of such liquidation, dissolution or winding-up, before any distribution of any part of the assets of the Company among the holders of the Common Shares or any other shares ranking junior to the Exchangeable Shares, an amount per share (the "**Liquidation Amount**") equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Liquidation Date, which shall be satisfied in full by the Company causing to be delivered to such holder one NPS Common Share, plus the Dividend Amount.

5.2 On or promptly after the Liquidation Date, and subject to the exercise by NPS Holdings of the Liquidation Call Right, the Company shall cause to be delivered to the holders of the Exchangeable Shares the Liquidation Amount for each such Exchangeable Share upon presentation and surrender of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the Act and the Articles of the Company and such additional documents and instruments as the Transfer Agent and the Company may reasonably require, at the registered office of the Company or at any office of the Transfer Agent as may be specified by the Company by notice to the holders of the Exchangeable Shares. Payment of the total Liquidation Amount for such Exchangeable Shares shall be made by delivery to each holder, at the address of the holder recorded in the register of members of the Company for the Exchangeable Shares or by holding for pick-up by the holder at the registered office of the Company or at any office of the Transfer Agent as may be specified by the Company by notice to the holders of Exchangeable Shares, on behalf of the Company of certificates representing NPS Common Shares (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any lien, claim or encumbrance) and a cheque of the Company payable at par at any branch of the bankers of the Company in respect of the remaining portion, if any, of the total Liquidation Amount (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom). On and after the Liquidation Date, the holders of the Exchangeable Shares shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive their proportionate part of the total Liquidation Amount, unless payment of the total Liquidation Amount for such Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the

holders shall remain unaffected until the total Liquidation Amount has been paid in the manner hereinbefore provided. The Company shall have the right at any time after the Liquidation Date to deposit or cause to be deposited the total Liquidation Amount in respect of the Exchangeable Shares represented by certificates that have not at the Liquidation Date been surrendered by the holders thereof in a custodial account with any chartered bank or trust company in Canada. Upon such deposit being made, the rights of the holders of Exchangeable Shares after such deposit shall be limited to receiving their proportionate part of the total Liquidation Amount (in each case less any amounts withheld on account of tax required to be deducted and withheld therefrom) for such Exchangeable Shares so deposited, against presentation and surrender of the said certificates held by them, respectively, in accordance with the foregoing provisions. Upon such payment or deposit of the total Liquidation Amount, the holders of the Exchangeable Shares shall thereafter be considered and deemed for all purposes to be holders of the NPS Common Shares delivered to them or the custodian on their behalf.

5.3 After the Company has satisfied its obligations to pay the holders of the Exchangeable Shares the Liquidation Amount per Exchangeable Share pursuant to Section 5.1 of these share provisions, such holders shall not be entitled to share in any further distribution of the assets of the Company.

## ARTICLE 6

### RETRACTION OF EXCHANGEABLE SHARES BY HOLDER

6.1 A holder of Exchangeable Shares shall be entitled at any time, subject to the exercise by NPS Holdings of the Retraction Call Right and otherwise upon compliance with the provisions of this Article 6, to require the Company to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Retraction Date (the "**Retraction Price**"), which shall be satisfied in full by the Company causing to be delivered to such holder one NPS Common Share for each Exchangeable Share presented and surrendered by the holder. To effect such redemption, the holder shall present and surrender at the registered office of the Company or at any office of the Transfer Agent as may be specified by the Company by notice to the holders of Exchangeable Shares the certificate or certificates representing the Exchangeable Shares which the holder desires to have the Company redeem, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the Act and the Articles of the Company and such additional documents and instruments as the Transfer Agent and the Company may reasonably require, and together with a duly executed statement (the "**Retraction Request**") in the form of Schedule A hereto or in such other form as may be acceptable to the Company:

- (a) specifying that the holder desires to have all or any number specified therein of the Exchangeable Shares represented by such certificate or certificates (the "**Retracted Shares**") redeemed by the Company;

- (b) stating the Business Day on which the holder desires to have the Company redeem the Retracted Shares (the "**Retraction Date**"), provided that the Retraction Date shall be not less than 10 Business Days nor more than 15 Business Days after the date on which the Retraction Request is received by the Company and further provided that, in the event that no such Business Day is specified by the holder in the Retraction Request, the Retraction Date shall be deemed to be the 15th Business Day after the date on which the Retraction Request is received by the Company; and
- (c) acknowledging the overriding right (the "**Retraction Call Right**") of NPS Holdings to purchase all but not less than all the Retracted Shares directly from the holder and that the Retraction Request shall be deemed to be a revocable offer by the holder to sell the Retracted Shares to NPS Holdings in accordance with the Retraction Call Right on the terms and conditions set out in Section 6.3 below.

6.2 Subject to the exercise by NPS Holdings of the Retraction Call Right, upon receipt by the Company or the Transfer Agent in the manner specified in Section 6.1 hereof of a certificate or certificates representing the number of Retracted Shares, together with a Retraction Request, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.7, the Company shall redeem the Retracted Shares effective at the close of business on the Retraction Date and shall cause to be delivered to such holder the total Retraction Price. If only a part of the Exchangeable Shares represented by any certificate is redeemed (or purchased by NPS Holdings pursuant to the Retraction Call Right), a new certificate for the balance of such Exchangeable Shares shall be issued to the holder at the expense of the Company.

6.3 Upon receipt by the Company of a Retraction Request, the Company shall immediately notify NPS Holdings thereof and shall provide to NPS Holdings a copy of the Retraction Request. In order to exercise the Retraction Call Right, NPS Holdings must notify the Company of its determination to do so (the "**NPS Holdings Call Notice**") within five Business Days of notification to NPS Holdings by the Company of the receipt by the Company of the Retraction Request. If NPS Holdings does not so notify the Company within such five Business Day period, the Company will notify the holder as soon as possible thereafter that NPS Holdings will not exercise the Retraction Call Right. If NPS Holdings delivers the NPS Holdings Call Notice within such five Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.7, the Retraction Request shall thereupon be considered only to be an offer by the holder to sell the Retracted Shares to NPS Holdings in accordance with the Retraction Call Right. In such event, the Company shall not redeem the Retracted Shares and NPS Holdings shall purchase from such holder and such holder shall sell to NPS Holdings on the Retraction Date the Retracted Shares for a purchase price (the "**Purchase Price**") per share equal to the Retraction Price per share, plus on the designated payment date therefor, to the extent not paid by the Company on the designated payment date therefor, any Dividend Amount. To the extent that NPS Holdings pays the Dividend Amount in respect of the Retracted Shares, the Company shall no longer be obligated to pay any declared

and unpaid dividends on such Retracted Shares. Provided that NPS Holdings has complied with Section 6.4, the closing of the purchase and sale of the Retracted Shares pursuant to the Retraction Call Right shall be deemed to have occurred as at the close of business on the Retraction Date and, for greater certainty, no redemption by the Company of such Retracted Shares shall take place on the Retraction Date. In the event that NPS Holdings does not deliver a NPS Holdings Call Notice within such five Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.7, the Company shall redeem the Retracted Shares on the Retraction Date and in the manner otherwise contemplated in this Article 6.

**6.4** The Company or NPS Holdings, as the case may be, shall deliver or cause the Trustee to deliver to the relevant holder, at the address of the holder recorded in the register of members of the Company for the Exchangeable Shares or at the address specified in the holder's Retraction Request or by holding for pick-up by the holder at the registered office of the Company or at any office of the Transfer Agent as may be specified by the Company by notice to the holders of Exchangeable Shares, certificates representing the NPS Common Shares (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any lien, claim or encumbrance) registered in the name of the holder or in such other name as the holder may request, and, if applicable and on or before the payment date therefor, a cheque payable at par at any branch of the bankers of the Company or NPS Holdings, as applicable, representing the aggregate Dividend Amount, in payment of the total Retraction Price or the total Purchase Price, as the case may be, in each case, less any amounts withheld on account of tax required to be deducted and withheld therefrom, and such delivery of such certificates and cheques on behalf of the Company or by NPS Holdings, as the case may be, or by the Transfer Agent shall be deemed to be payment of and shall satisfy and discharge all liability for the total Retraction Price or total Purchase Price, as the case may be, to the extent that the same is represented by such share certificates and cheques (plus any tax deducted and withheld therefrom and remitted to the proper tax authority).

**6.5** On and after the close of business on the Retraction Date, the holder of the Retracted Shares shall cease to be a holder of such Retracted Shares and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive his proportionate part of the total Retraction Price or total Purchase Price, as the case may be, unless upon presentation and surrender of certificates in accordance with the foregoing provisions, payment of the total Retraction Price or the total Purchase Price, as the case may be, shall not be made as provided in Section 6.4, in which case the rights of such holder shall remain unaffected until the total Retraction Price or the total Purchase Price, as the case may be, has been paid in the manner hereinbefore provided. On and after the close of business on the Retraction Date, provided that presentation and surrender of certificates and payment of the total Retraction Price or the total Purchase Price, as the case may be, has been made in accordance with the foregoing provisions, the holder of the Retracted Shares so redeemed by the Company or purchased by NPS Holdings shall thereafter be considered and deemed for all purposes to be a holder of the NPS Common Shares delivered to it.



6.6 Notwithstanding any other provision of this Article 6, the Company shall not be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent that such redemption of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law. If the Company believes that on any Retraction Date it would not be permitted by any of such provisions to redeem the Retracted Shares tendered for redemption on such date, and provided that NPS Holdings shall not have exercised the Retraction Call Right with respect to the Retracted Shares, the Company shall only be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent of the maximum number that may be so redeemed (rounded down to a whole number of shares) as would not be contrary to such provisions and shall notify the holder at least two Business Days prior to the Retraction Date as to the number of Retracted Shares which will not be redeemed by the Company. In any case in which the redemption by the Company of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law, the Company shall redeem Retracted Shares in accordance with Section 6.2 of these share provisions on a *pro rata* basis and shall issue to each holder of Retracted Shares a new certificate, at the expense of the Company, representing the Retracted Shares not redeemed by the Company pursuant to Section 6.2 hereof. Provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.7, the holder of any such Retracted Shares not redeemed by the Company pursuant to Section 6.2 of these share provisions as a result of solvency requirements or other provisions of applicable law shall be deemed by giving the Retraction Request to require NPS to purchase such Retracted Shares from such holder on the Retraction Date or as soon as practicable thereafter on payment by NPS to such holder of the Purchase Price for each such Retracted Share, all as more specifically provided in the Voting and Exchange Trust Agreement.

6.7 A holder of Retracted Shares may, by notice in writing given by the holder to the Company before the close of business on the Business Day immediately preceding the Retraction Date, withdraw its Retraction Request, in which event such Retraction Request shall be null and void and, for greater certainty, the revocable offer constituted by the Retraction Request to sell the Retracted Shares to NPS Holdings shall be deemed to have been revoked.

## ARTICLE 7 REDEMPTION OF EXCHANGEABLE SHARES BY THE COMPANY

7.1 Subject to applicable law, and provided NPS Holdings has not exercised the Redemption Call Right, the Company shall on the Redemption Date redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Redemption Date (the "**Redemption Price**"), which shall be satisfied in full by the Company causing to be delivered to each holder of Exchangeable Shares one NPS Common Share for each Exchangeable Share held by such holder, together with the Dividend Amount.

7.2 In any case of a redemption of Exchangeable Shares under this Article 7, the Company shall, at least 60 days before the Redemption Date (other than a Redemption Date established in connection with a NPS Control Transaction, send or cause to be sent to each

holder of Exchangeable Shares a notice in writing of the redemption by the Company or the purchase by NPS Holdings under the Redemption Call Right, as the case may be, of the Exchangeable Shares held by such holder. In the case of a Redemption Date established in connection with a NPS Control Transaction, an Exchangeable Share Voting Event or an Exempt Exchangeable Share Voting Event, the written notice of redemption by the Company or the purchase by NPS Holdings under the Redemption Call Right will be sent on or before the Redemption Date, on as many days prior written notice as may be determined by the Board of Directors of the Company to be reasonably practicable in the circumstances. In any such case, such notice shall set out the formula for determining the Redemption Price or the Redemption Call Purchase Price, as the case may be, the Redemption Date and, if applicable, particulars of the Redemption Call Right.

7.3 On or after the Redemption Date and subject to the exercise by NPS Holdings of the Redemption Call Right, the Company shall cause to be delivered to the holders of the Exchangeable Shares to be redeemed the Redemption Price for each such Exchangeable Share, together with the Dividend Amount upon presentation and surrender at the registered office of the Company or at any office of the Trustee as may be specified by the Company in such notice of the certificates representing such Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the Act and the Articles of the Company and such additional documents and instruments as the Transfer Agent and the Company may reasonably require. Payment of the total Redemption Price for such Exchangeable Shares, together with payment of the Dividend Amount, shall be made by delivery to each holder, at the address of the holder recorded in the register of members of the Company or by holding for pick-up by the holder at the registered office of the Company or at any office of the Transfer Agent as may be specified by the Company in such notice, on behalf of the Company of certificates representing NPS Common Shares (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any lien, claim or encumbrance) and, if applicable, a cheque of the Company payable at par at any branch of the bankers of the Company in payment of any Dividend Amounts, in each case, less any amounts withheld on account of tax required to be deducted and withheld therefrom. On and after the Redemption Date, the holders of the Exchangeable Shares called for redemption shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive their proportionate part of the total Redemption Price and any Dividend Amount, unless payment of the total Redemption Price and any Dividend Amount for such Exchangeable Shares shall not be made upon presentation and surrender of certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the total Redemption Price and any Dividend Amount shall have been paid in the manner hereinbefore provided. The Company shall have the right at any time after the sending of notice of its intention to redeem the Exchangeable Shares as aforesaid to deposit or cause to be deposited the total Redemption Price for and the full amount of the Dividend Amount on (except as otherwise provided in this Section 7.3) the Exchangeable Shares so called for redemption, or of such of the said Exchangeable Shares represented by certificates that have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption, in a custodial account with any chartered bank or trust

#### 4.7 Withholding Rights

NPS Allelix Inc., NPS Holdings, NPS and the Depositary shall be entitled to deduct and withhold from any dividend or consideration otherwise payable pursuant to transactions contemplated by this Agreement to any holder of Allelix Common Shares, NPS Common Shares or Exchangeable Shares such amounts as NPS Allelix Inc., NPS Holdings, NPS or the Depositary is required or permitted to deduct and withhold with respect to such payment under the ITA, the United States *Internal Revenue Code of 1986* or any provision of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, NPS Allelix Inc., NPS Holdings, NPS and the Depositary are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to NPS Allelix Inc., NPS Holdings, NPS or the Depositary, as the case may be, to enable it to comply with such deduction or withholding requirement and NPS Allelix Inc., NPS Holdings, NPS or the Depositary shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale.

### ARTICLE 5

#### CERTAIN RIGHTS OF NPS HOLDINGS TO ACQUIRE EXCHANGEABLE SHARES

##### 5.1 NPS Holdings Liquidation Call Right

- (a) NPS Holdings shall have the overriding right (the "**Liquidation Call Right**"), in the event of and notwithstanding the proposed liquidation, dissolution or winding-up of NPS Allelix Inc. pursuant to Article 5 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is an affiliate of NPS) on the Liquidation Date all but not less than all of the Exchangeable Shares held by each such holder on payment by NPS Holdings of an amount per share (the "**Liquidation Call Purchase Price**") equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Liquidation Date, which shall be satisfied in full by NPS Holdings causing to be delivered to such holder one NPS Common Share, plus any Dividend Amount for each Exchangeable Share held by such holder. In the event of the exercise of the Liquidation Call Right by NPS Holdings, each holder shall be obligated to sell all the Exchangeable Shares held by the holder to NPS Holdings on the Liquidation Date on payment by NPS Holdings to the holder of the Liquidation Call Purchase Price for each such share, and NPS Allelix Inc. shall have no obligation to pay any Liquidation Amount to the holders of such shares so purchased by NPS Holdings.

#### **4.4 No Fractional Shares**

No certificates representing fractional Exchangeable Shares or fractional NPS Common Shares shall be issued upon the surrender for exchange of certificates pursuant to Section 4.1 or 4.2 and no dividend, stock split or other change in the capital structure of NPS Allelix Inc. shall relate to any such fractional security and such fractional interests shall not entitle the owner thereof to exercise any rights as a security holder of NPS Allelix Inc.. In lieu of any such fractional securities, each Person otherwise entitled to a fractional interest in an Exchangeable Share or to a fractional interest in a NPS Common Share will receive a share certificate evidencing that number of shares to which such Person is otherwise entitled, rounded up to the nearest whole number.

#### **4.5 Lost Certificates**

In the event that any certificate which immediately prior to the Effective Time represented one or more outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, any cash pursuant to Section 4.4 and/or one or more certificates representing one or more Exchangeable Shares or NPS Common Shares (and any dividends or distributions with respect thereto) deliverable in accordance with such holder's Letter of Transmittal and Election Form. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom certificates representing Exchangeable Shares or NPS Common Shares are to be issued shall, as a condition precedent to the issuance thereof, give a bond satisfactory to NPS Allelix Inc., NPS and their respective transfer agents in such sum as NPS Allelix Inc. or NPS may direct or otherwise indemnify NPS Allelix Inc. and NPS in a manner satisfactory to NPS Allelix Inc. and NPS against any claim that may be made against NPS Allelix Inc. or NPS with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **4.6 Extinction of Rights**

Any certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2 that is not deposited with all other instruments required by Section 4.1 or 4.2 on or prior to the date of the notice referred to in Section 7.2 of the Exchangeable Share Provisions shall cease to represent a claim or interest of any kind or nature as a shareholder of NPS Allelix Inc. or NPS. On such date, the Exchangeable Shares or NPS Common Shares to which the former holder of the certificate referred to in the preceding sentence was ultimately entitled shall be deemed to have been surrendered for no consideration to NPS Allelix Inc. or NPS, as the case may be, together with all entitlements to dividends, distributions and interest in respect thereof held for such former holder. None of NPS, NPS Allelix Inc., NPS Holdings or the Depositary shall be liable to any person in respect of any NPS Common Shares or Exchangeable Shares (or dividends, distributions and interest in respect thereof) delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

- (b) To exercise the Liquidation Call Right, NPS Holdings must notify the Trustee, as agent for the holders of Exchangeable Shares, and NPS Allelix Inc. of NPS Holdings's intention to exercise such right at least 45 days before the Liquidation Date in the case of a voluntary liquidation, dissolution or winding-up of NPS Allelix Inc. and at least five Business Days before the Liquidation Date in the case of an involuntary liquidation, dissolution or winding-up of NPS Allelix Inc.. The Trustee will notify the holders of Exchangeable Shares as to whether or not NPS Holdings has exercised the Liquidation Call Right forthwith after the expiry of the period during which the same may be exercised by NPS Holdings. If NPS Holdings exercises the Liquidation Call Right, then on the Liquidation Date, NPS Holdings will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Liquidation Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Liquidation Call Right, NPS Holdings shall deposit with the Transfer Agent, on or before the Liquidation Date, certificates representing the aggregate number of NPS Common Shares deliverable by NPS Holdings and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings representing the aggregate Dividend Amount in payment of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. Provided that NPS Holdings has complied with the immediately preceding sentence, on and after the Liquidation Date the rights of each holder of Exchangeable Shares will be limited to receiving such holder's proportionate part of the total Liquidation Call Purchase Price payable by NPS Holdings upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Liquidation Date be considered and deemed for all purposes to be the holder of the NPS Common Shares to which it is entitled. Upon surrender to the Transfer Agent of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the governing corporate statute and the by-laws of NPS Allelix Inc. and such additional documents and instruments as the Transfer Agent may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Transfer Agent on behalf of NPS Holdings shall deliver to such holder, certificates representing the NPS Common Shares to which the holder is entitled and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings in payment of the remaining portion, if any, of the total Liquidation Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. If NPS Holdings does not exercise the Liquidation Call Right in the manner described above, on the Liquidation Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the Liquidation Amount otherwise payable by NPS Allelix Inc. in connection with the liquidation,

dissolution or winding-up of NPS Allelix Inc. pursuant to Article 5 of the Exchangeable Share Provisions.

## **5.2 NPS Holdings Redemption Call Right**

In addition to NPS Holdings's rights contained in the Exchangeable Share Provisions, including, without limitation, the Retraction Call Right (as defined in the Exchangeable Share Provisions), NPS Holdings shall have the following rights in respect of the Exchangeable Shares:

- (a) NPS Holdings shall have the overriding right (the "**Redemption Call Right**"), notwithstanding the proposed redemption of the Exchangeable Shares by NPS Allelix Inc. pursuant to Article 7 of the Exchangeable Share Provisions, to purchase from all but not less than all of the holders of Exchangeable Shares (other than any holder of Exchangeable Shares which is an affiliate of NPS) on the Redemption Date all but not less than all of the Exchangeable Shares held by each such holder on payment by NPS to each holder of an amount per Exchangeable Share (the "**Redemption Call Purchase Price**") equal to the Current Market Price of a NPS Common Share on the last Business Day prior to the Redemption Date, which shall be satisfied in full by NPS Holdings causing to be delivered to such holder one NPS Common Share, plus any Dividend Amount for each Exchangeable Share held by such holder. In the event of the exercise of the Redemption Call Right by NPS Holdings, each holder shall be obligated to sell all the Exchangeable Shares held by the holder to NPS Holdings on the Redemption Date on payment by NPS Holdings to the holder of the Redemption Call Purchase Price for each such share, and NPS Allelix Inc. shall have no obligation to redeem, or to pay any Dividend Amount in respect of, such shares so purchased by NPS Holdings.
- (b) To exercise the Redemption Call Right, NPS Holdings must notify the Trustee, as agent for the holders of Exchangeable Shares, and NPS Allelix Inc. of NPS Holdings's intention to exercise such right at least 60 days before the Redemption Date, except in the case of a redemption occurring as a result of a NPS Control Transaction, an Exchangeable Share Voting Event or an Exempt Exchangeable Share Voting Event (each as defined in the Exchangeable Share Provisions), in which case NPS Holdings shall so notify the Trustee and NPS Allelix Inc. on or before the Redemption Date. The Trustee will notify the holders of the Exchangeable Shares as to whether or not NPS Holdings has exercised the Redemption Call Right forthwith after the expiry of the period during which the same may be exercised by NPS Holdings. If NPS Holdings exercises the Redemption Call Right, on the Redemption Date NPS Holdings will purchase and the holders will sell all of the Exchangeable Shares then outstanding for a price per share equal to the Redemption Call Purchase Price.
- (c) For the purposes of completing the purchase of the Exchangeable Shares pursuant to the Redemption Call Right, NPS Holdings shall deposit with the Trustee, on or

before the Redemption Date, certificates representing the aggregate number of NPS Common Shares deliverable by NPS Holdings and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings representing the aggregate Dividend Amount in payment of the total Redemption Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. Provided that NPS Holdings has complied with the immediately preceding sentence, on and after the Redemption Date the rights of each holder of Exchangeable Shares will be limited to receiving such holder's proportionate part of the total Redemption Call Purchase Price payable by NPS Holdings upon presentation and surrender by the holder of certificates representing the Exchangeable Shares held by such holder and the holder shall on and after the Redemption Date be considered and deemed for all purposes to be the holder of the NPS Common Shares to which it is entitled. Upon surrender to the Trustee of a certificate or certificates representing Exchangeable Shares, together with such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the governing corporate statute and the by-laws of NPS Allelix Inc. and such additional documents and instruments as the Trustee may reasonably require, the holder of such surrendered certificate or certificates shall be entitled to receive in exchange therefor, and the Trustee on behalf of NPS Holdings shall deliver to such holder, certificates representing the NPS Common Shares to which the holder is entitled and a cheque or cheques of NPS Holdings payable at par at any branch of the bankers of NPS Holdings in payment of the remaining portion, if any, of the total Redemption Call Purchase Price, less any amounts withheld pursuant to Section 4.7 hereof. If NPS Holdings does not exercise the Redemption Call Right in the manner described above, on the Redemption Date the holders of the Exchangeable Shares will be entitled to receive in exchange therefor the redemption price otherwise payable by NPS Allelix Inc. in connection with the redemption of the Exchangeable Shares pursuant to Article 7 of the Exchangeable Share Provisions.

## **ARTICLE 6 AMENDMENTS**

### **6.1 Amendments to Plan of Arrangement**

Allelix reserves the right to amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Date, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) consented to by NPS, (iii) filed with the Court and, if made following the Allelix Meeting, approved by the Court and (iv) communicated to holders of Allelix Common Shares, Allelix Options, Allelix Warrants and Allelix Preferred Shares, if and as required by the Court.

Any amendment, modification or supplement to this Plan of Arrangement may be proposed by Allelix at any time prior to the Allelix Meeting (provided that NPS shall have consented thereto) with or without any other prior notice or communication, and if so proposed

and accepted by the Persons voting at the Allelix Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.

Any amendment, modification or supplement to this Plan of Arrangement that is approved by the Court following the Allelix Meeting shall be effective only if (i) it is consented to by each of Allelix and NPS and (ii) if required by the Court, it is consented to by holders of the Allelix Common Shares, Allelix Options, Allelix Warrants or Allelix Preferred Shares voting in the manner directed by the Court.

Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by NPS, provided that it concerns a matter which, in the reasonable opinion of NPS, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the financial or economic interests of any holder of Allelix Common Shares, Allelix Options, Allelix Warrants, or Allelix Preferred Shares.

## **ARTICLE 7 FURTHER ASSURANCES**

**7.1** Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them in order further to document or evidence any of the transactions or events set out herein.



then each holder of Series 1 Shares and Pari Passu Shares shall share rateably in any distribution of the Corporation's assets in proportion to the respective amounts that would have been payable if such Funds were sufficient to permit payment in full of all such amounts. The purchase or redemption by the Corporation of shares of any class, in any manner permitted by law, shall not, for the purposes hereof, be regarded as liquidation, dissolution or winding up of the Corporation. Neither the consolidation nor merger of the Corporation with or into any other corporation or corporations, nor the sale or transfer by the Corporation of less than substantially all of its assets, shall, for the purposes hereof, be deemed to be a liquidation, dissolution or winding up of the Corporation, provided that such merger, sale or transfer does not amend, alter or change the preferences or rights of the Series 1 Shares or the qualifications or limits thereof in a manner that adversely affects the Series 1 Shares. No holder of Series 1 Shares shall be entitled to receive any amounts with respect thereto upon any liquidation, dissolution or winding up of the Corporation other than the amounts provided for herein.

5. Series 1 Rank. All Common Shares shall be of junior rank to all Series 1 Shares in respect to the preferences as to distributions and payments upon the liquidation, dissolution or winding up of the Corporation. The rights of the Common Shares shall be subject to the preferences and relative rights of the Series 1 Shares. The Corporation may authorize and issue additional or other preferred shares which are of equal rank with the Series 1 Shares in respect of the preferences as to distributions and payments upon the liquidation, dissolution or winding up of the Corporation. In the event of the merger or consolidation of the Corporation with or into another corporation, the Series 1 Shares shall maintain their relative powers, designations and preferences provided herein.
6. Vote to Change the Terms of Series 1 Shares. The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the holders of the not less than two-thirds of the then outstanding Series 1 Shares shall be required to (a) amend, alter, change or repeal any of the Series 1 Share Provisions, (b) authorize, create, or issue any new class or series of shares or any other securities convertible into equity securities of the Corporation having a preference over the Series 1 Shares with respect to redemptions or upon liquidation or dissolution of the Corporation, or (c) reclassify the Common Shares or any other capital of junior rank to the Series 1 Shares into shares of any class or series of capital (i) ranking either as to payment or distribution of assets or redemptions, prior to or on parity with the Series 1 Shares, or (ii) which in any manner adversely affects the holders of Series 1 Shares.

7. Amendments Upon Exchange of Outstanding Series 1 Shares. Upon exchange, the Series 1 Shares shall be cancelled and the board of directors of the Corporation may, at its discretion and without a vote of the shareholders of the Corporation, withdraw this designation in its entirety by providing for the filing of the applicable amendment of the Corporation's Articles of Incorporation, and the Series 1 Shares designated hereby shall thereby return to the status of authorized but unissued and undesignated preferred shares of the Corporation.
8. Business Day. In the event that any date upon which any action by the Corporation or a holder of Series 1 Shares hereunder, is not a business day (being any day of the year, other than a Saturday, Sunday or any day on which banks are required or are authorized to close in Toronto, Ontario), then such action shall be required to be taken on the next succeeding business day.

- (iii) *By-laws.* The by-laws of Amalco shall be the same as the by-laws of Allelix;
- (iv) *No Distribution.* No securities shall be issued and no asset shall be distributed by Amalco in connection with the Amalgamation;
- (v) *Registered Office.* The address of the registered office of Amalco shall be 6850 Goreway Drive, Mississauga, Ontario, L4V 1V7;
- (vi) *Business and Powers.* There shall be no restrictions on the business that Amalco may carry on or on the powers it may exercise;
- (vii) *Authorized Share Capital.* Amalco shall be authorized to issue an unlimited number of common shares and an unlimited number of preferred shares having the rights, privileges, restrictions and conditions attaching to the common shares and preferred shares of Allelix and which shall be set forth in Appendix III to this Plan of Arrangement attached hereto at the time of the filing of articles of arrangement in respect of this Plan of Arrangement with the Director;
- (viii) *Share Restrictions.*
  - A. *Transfer.* The transfer of shares in the capital of Amalco shall be restricted in that no share shall be transferred without either (i) the consent of the directors of Amalco expressed by resolution passed by the board of directors or by an instrument or instruments in writing signed by all of such directors, or (ii) the consent of the holders of shares to which are attached more than 50% of the voting rights attaching to all shares for the time being outstanding entitled to vote at such time expressed by a resolution passed by such shareholders at a meeting duly called and constituted for that purpose or by an instrument or instruments in writing signed by all of such shareholders;
  - B. *Number of Shareholders.* The number of shareholders of Amalco, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of Amalco, were, while in that employment, and have continued after termination of that employment to be, shareholders of Amalco, is limited to not more than 50, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder; and
  - C. *Public Distributions.* Any invitation to the public to subscribe for any securities of Amalco is prohibited;

- (ix) *Number of Directors.* The number of directors of Amalco shall be 3 and thereafter shall be such number of not less than one and not more than ten as the shareholders of Amalco may from time to time determine by special resolution or, if empowered to do so by special resolution, as the directors of Amalco may from time to time determine;
- (x) *Initial Directors.* The directors shall be James U. Jensen, James Howard-Tripp and Paul J. Van Damme, a majority of whom are Canadian residents, until their respective successors have been duly elected or appointed; and
- (xi) *Stated Capital.* For the purposes of the OBCA, the aggregate stated capital of the issued and outstanding common shares in the capital of Amalco immediately after the Amalgamation shall be equal to the aggregate amount of the stated capital attributable to the common shares in the capital of Allelix immediately before the Amalgamation and the aggregate stated capital of the issued and outstanding preferred shares in the capital of Amalco, if any, immediately after the Amalgamation shall be equal to the aggregate amount of the stated capital attributed to the preferred shares in the capital of Allelix, if any, immediately before the Amalgamation.

## 2.3

### Elections

- (a) Each Person who, at or prior to the Election Deadline, is a holder of record of Allelix Common Shares will be entitled, with respect to all or a portion of such shares, to make an election at or prior to the Election Deadline to receive Exchangeable Shares or NPS Common Shares, or a combination thereof, in exchange for such holder's Allelix Common Shares on the basis set forth herein and in the Letter of Transmittal and Election Form; provided that, notwithstanding anything to the contrary herein, a holder of Allelix Common Shares who is not a Canadian Resident will not be entitled to elect to receive Exchangeable Shares and any such election otherwise made by any such holder shall be and be deemed to be an election to receive a NPS Elected Share.
- (b) Each Person who, at or prior to the Election Deadline, is a holder of record of Allelix Common Shares and who is Canadian Resident, other than a holder who is exempt from tax under the ITA, who has elected (or is deemed to have elected) to receive Exchangeable Shares shall be entitled to make an income tax election pursuant to subsection 85(1) of the ITA or, if the holder is a partnership, subsection 85(2) of the ITA (and in each case, where applicable, the analogous provisions of provincial income tax law) with respect to the transfer of its Allelix Common Shares to NPS Allelix Inc. by providing two signed copies of the necessary prescribed election forms to the Depositary within 90 days following the Effective Date, duly completed with the details of the number of Allelix Common Shares transferred and the applicable agreed amounts for the purposes

of such elections. Thereafter, subject to the election forms being correct and complete and complying with the provisions of the ITA (and applicable provincial income tax law), the forms will be signed by NPS Allelix Inc. and returned to such holder within 30 days after the receipt thereof by the Depositary for filing with Revenue Canada (or the applicable provincial taxing authority). NPS Allelix Inc. will not be responsible for the proper completion of any election form and, except for NPS Allelix Inc.'s obligation to return duly completed election forms which are received by the Depositary within 90 days of the Effective Date, within 30 days after the receipt thereof by the Depositary, NPS Allelix Inc. will not be responsible for any taxes, interest or penalties resulting from the failure by a holder of Allelix Common Shares to properly complete or file the election forms in the form and manner and within the time prescribed by the ITA (or any applicable provincial legislation). In its sole discretion, NPS Allelix Inc. may choose to sign and return an election form received more than 90 days following the Effective Date, but NPS Allelix Inc. will have no obligation to do so.

#### **2.4 Adjustments to Exchange Ratio**

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, reverse split, stock dividend (including any dividend or distribution of securities convertible into NPS Common Shares or Allelix Common Shares other than stock dividends paid in lieu of ordinary course dividends), reorganization, recapitalization or other like change with respect to NPS Common Shares or Allelix Common Shares occurring after the date of the Arrangement Agreement and prior to the Effective Time.

### **ARTICLE 3 RIGHTS OF DISSENT**

#### **3.1 General**

Notwithstanding Article 2, each holder of Allelix Common Shares is entitled to dissent from the Arrangement Resolution and to be paid by Allelix the fair value of the Allelix Common Shares held by such holder in respect of which such holder dissents, determined as of the day before the date on which the Arrangement Resolution is passed (and in the event the Arrangement becomes effective) (the "**Dissent Right**"), provided that (i) such holder complies with Section 190 of the CBCA, and (ii) such holder shall not have voted any of its Allelix Common Shares in favour of the Arrangement Resolution at the Allelix Meeting in person or by proxy.

#### **3.2 Treatment of Dissenting Shareholders**

A holder of Allelix Common Shares who:

- (a) properly exercises the Dissent Right by complying with all of the procedures (the **"Dissent Procedures"**) required to be complied with by a Dissenting Shareholder, will:
  - (i) be bound by the provisions of this Article 3,
  - (ii) be deemed not to have participated in the Arrangement, and
  - (iii) cease to have any rights as a holder of Allelix Common Shares other than the right to be paid the fair value of the Allelix Common Shares by Allelix in accordance with the Dissent Procedures, or
- (b) seeks to exercise the Dissent Right, but:
  - (i) who for any reason does not properly fulfil each of the Dissent Procedures required to be completed by a Dissenting Shareholder, or
  - (ii) subsequent to giving its written notice of dissent provided for in Section 190 of the CBCA in respect of the Arrangement Resolution, acts inconsistently with such dissent,

will be deemed to have participated in the Arrangement on the same basis as each holder of Allelix Common Shares and shall receive such number of NPS Common Shares or Exchangeable Shares as it is entitled to on the basis determined in accordance with Article 2;

and a holder of Allelix Common Shares or Allelix Preferred Shares who:
- (c) validly exercises the rights of dissent provided for under Section 190 of the CBCA in respect of the Continuance Resolution will (in the event the Continuance becomes effective):
  - (i) be deemed not to have participated in the Continuance or the Arrangement, and
  - (ii) cease to have any rights as a holder of Allelix Common Shares or Allelix Preferred Shares, as the case may be, other than the right to be paid the fair value of such shares by Allelix in accordance with Section 190 of the CBCA, or
- (d) seeks to exercise the rights of the dissent provided for under Section 190 of the CBCA in respect of the Continuance Resolution, but:
  - (i) who for any reason does not properly fulfil each of the dissent procedures required to be completed by a dissenting shareholder; or

- (ii) subsequent to giving its notice of dissent as provided for under Section 190 of the CBCA, acts inconsistently with such dissent,

will be deemed to have participated in the Continuance and the Arrangement on the basis that they had not dissented and shall receive such number of NPS Common Shares or Exchangeable Shares as they are entitled to on the basis determined in accordance with Article 2.

## **ARTICLE 4**

### **CERTIFICATES AND FRACTIONAL SHARES**

#### **4.1 Issuance of Certificates Representing Exchangeable Shares**

At or promptly after the Effective Time, NPS Allelix Inc. shall deposit with the Depositary, for the benefit of the holders of Allelix Common Shares who will receive Exchangeable Shares in connection with the Arrangement, certificates representing that number of whole Exchangeable Shares to be delivered pursuant to Section 2.2 upon the exchange of Allelix Common Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented Allelix Common Shares that were exchanged for Exchangeable Shares under the Arrangement, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the OBCA and the articles and by-laws of Allelix and such additional documents and instruments as the Depositary may reasonably require the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded up to the nearest whole number) of Exchangeable Shares which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to Section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Allelix Common Shares that is not registered in the transfer records of Allelix, a certificate representing the proper number of Exchangeable Shares may be issued to the transferee if the certificate representing such Allelix Common Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.1, each certificate which immediately prior to the Effective Time represented Allelix Common Shares that were exchanged for Exchangeable Shares shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing Exchangeable Shares as contemplated by this Section 4.1, (ii) a cash payment in lieu of any fractional Exchangeable Shares as contemplated by Section 4.4 and (iii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to Exchangeable Shares as contemplated by Section 4.3.

#### **4.2 Issuance of Certificates representing NPS Common Shares**

At or promptly after the Effective Time, NPS Allelix Inc. shall deposit with the Depositary, for the benefit of the holders of Allelix Common Shares who will receive NPS Common Shares in connection with the Arrangement, certificates representing that whole

number of NPS Common Shares to be delivered pursuant to Section 2.2 upon the exchange of Allelix Common Shares. Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged for NPS Common Shares under the Arrangement, together with such other documents and instruments as would have been required to effect the transfer of the shares formerly represented by such certificate under the OBCA, the articles and by-laws of Allelix and such additional documents and instruments as the Depositary may reasonably require, the holder of such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, a certificate representing that number (rounded up to the nearest whole number) of NPS Common Shares which such holder has the right to receive (together with any dividends or distributions with respect thereto pursuant to Section 4.3), and the certificate so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Allelix Common Shares which is not registered in the transfer records of Allelix, a certificate representing the proper number of NPS Common Shares may be issued to the transferee if the certificate representing such Allelix Common Shares is presented to the Depositary, accompanied by all documents required to evidence and effect such transfer. Until surrendered as contemplated by this Section 4.2, each certificate which immediately prior to the Effective Time represented one or more outstanding Allelix Common Shares that were exchanged for NPS Common Shares shall be deemed at all times after the Effective Time to represent only the right to receive upon such surrender (i) the certificate representing NPS Common Shares as contemplated by this Section 4.2, (ii) a cash payment in lieu of any fractional NPS Common Shares as contemplated by Section 4.4 and (iii) any dividends or distributions with a record date after the Effective Time theretofore paid or payable with respect to NPS Common Shares as contemplated by Section 4.3.

#### **4.3 Distributions with Respect to Unsurrendered Certificates**

No dividends or other distributions declared or made after the Effective Time with respect to Exchangeable Shares or NPS Common Shares with a record date after the Effective Time shall be paid to the holder of any unsurrendered certificate which immediately prior to the Effective Time represented outstanding Allelix Common Shares that were exchanged pursuant to Section 2.2, and no interest shall be earned or payable on these proceeds, unless and until the holder of such certificate shall surrender such certificate in accordance with Section 4.1 or 4.2. Subject to applicable law and to Section 4.6, at the time of such surrender of any such certificate (or, in the case of clause (ii) below, at the appropriate payment date), there shall be paid to the holder of the certificates representing Allelix Common Shares, as the case may be, without interest, (i) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to the Exchangeable Shares or NPS Common Shares, as the case may be, to which such holder is entitled pursuant hereto and (ii) on the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and a payment date subsequent to surrender payable with respect to such Exchangeable Shares or NPS Common Shares, as the case may be.



company in Canada named in such notice, less any amounts withheld on account of tax required to be deducted and withheld therefrom. Upon the later of such deposit being made and the Redemption Date, the Exchangeable Shares in respect whereof such deposit shall have been made shall be redeemed and the rights of the holders thereof after such deposit or Redemption Date, as the case may be, shall be limited to receiving their proportionate part of the total Redemption Price and the Dividend Amount for such Exchangeable Shares so deposited, against presentation and surrender of the said certificates held by them, respectively, in accordance with the foregoing provisions. Upon such payment or deposit of the total Redemption Price and the full Dividend Amount, the holders of the Exchangeable Shares shall thereafter be considered and deemed for all purposes to be holders of the NPS Common Shares delivered to them or the custodian on their behalf.

## **ARTICLE 8**

### **PURCHASE FOR CANCELLATION**

8.1 Subject to applicable law, the Company may at any time and from time to time purchase for cancellation all or any part of the outstanding Exchangeable Shares at any price by tender to all the holders of record of Exchangeable Shares then outstanding or through the facilities of any stock exchange on which the Exchangeable Shares are listed or quoted at any price per share. If in response to an invitation for tenders under the provisions of this Section 8.1, more Exchangeable Shares are tendered at a price or prices acceptable to the Company than the Company is prepared to purchase, the Exchangeable Shares to be purchased by the Company shall be purchased as nearly as may be *pro rata* according to the number of shares tendered by each holder who submits a tender to the Company, provided that when shares are tendered at different prices, the pro rating shall be effected (disregarding fractions) only with respect to the shares tendered at the price at which more shares were tendered than the Company is prepared to purchase after the Company has purchased all the shares tendered at lower prices. If part only of the Exchangeable Shares represented by any certificate shall be purchased, a new certificate for the balance of such shares shall be issued at the expense of the Company.

## **ARTICLE 9**

### **VOTING RIGHTS**

9.1 Except as required by applicable law and by Article 10 hereof, the holders of the Exchangeable Shares shall not be entitled as such to receive notice of or to attend any meeting of the Shareholders of the Company or to vote at any such meeting.

## **ARTICLE 10**

### **AMENDMENT AND APPROVAL**

10.1 The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares may be added to, changed or removed but only with the approval of the holders of the Exchangeable Shares given as hereinafter specified.

**10.2** Any approval given by the holders of the Exchangeable Shares to add to, change or remove any right, privilege, restriction or condition attaching to the Exchangeable Shares or any other matter requiring the approval or consent of the holders of the Exchangeable Shares shall be deemed to have been sufficiently given if it shall have been given in accordance with applicable law subject to a minimum requirement that such approval be evidenced by resolution passed by not less than two-thirds of the votes cast on such resolution at a meeting of holders of Exchangeable Shares duly called and held at which the holders of at least 10% of the outstanding Exchangeable Shares at that time are present or represented by proxy; provided that if at any such meeting the holders of at least 10% of the outstanding Exchangeable Shares at that time are not present or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than five days thereafter and to such time and place as may be designated by the Chairman of such meeting. At such adjourned meeting the holders of Exchangeable Shares present or represented by proxy thereat may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than two-thirds of the votes cast on such resolution at such meeting shall constitute the approval or consent of the holders of the Exchangeable Shares.

## **ARTICLE 11**

### **RECIPROCAL CHANGES, ETC. IN RESPECT OF NPS COMMON SHARES**

**11.1** Each holder of an Exchangeable Share acknowledges that the Support Agreement provides, in part, that NPS will not without the prior approval of the Company and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions:

- (a) issue or distribute NPS Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire NPS Common Shares) to the holders of all or substantially all of the then outstanding NPS Common Shares by way of stock dividend or other distribution, other than an issue of NPS Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire NPS Common Shares) to holders of NPS Common Shares who exercise an option to receive dividends in NPS Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire NPS Common Shares) in lieu of receiving cash dividends;
- (b) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding NPS Common Shares entitling them to subscribe for or to purchase NPS Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire NPS Common Shares); or
- (c) issue or distribute to the holders of all or substantially all of the then outstanding NPS Common Shares:

- (i) shares or securities of NPS of any class other than NPS Common Shares (other than shares convertible into or exchangeable for or carrying rights to acquire NPS Common Shares);
- (ii) rights, options or warrants other than those referred to in Section 11.1(b) above;
- (iii) evidences of indebtedness of NPS; or
- (iv) assets of NPS,

unless the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares.

**11.2** Each holder of an Exchangeable Share acknowledges that the Support Agreement further provides, in part, that NPS will not without the prior approval of the Company and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions:

- (a) subdivide, redivide or change the then outstanding NPS Common Shares into a greater number of NPS Common Shares;
- (b) reduce, combine, consolidate or change the then outstanding NPS Common Shares into a lesser number of NPS Common Shares; or
- (c) reclassify or otherwise change the NPS Common Shares or effect an amalgamation, merger, reorganization or other transaction affecting the NPS Common Shares,

unless the same or an economically equivalent change shall simultaneously be made to, or in, the rights of the holders of the Exchangeable Shares. The Support Agreement further provides, in part, that the aforesaid provisions of the Support Agreement shall not be changed without the approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions.

## **ARTICLE 12**

### **ACTIONS BY THE COMPANY UNDER SUPPORT AGREEMENT**

**12.1** The Company will take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by NPS, NPS Holdings and the Company with all provisions of the Support Agreement applicable to NPS, NPS Holdings and the Company, respectively, in accordance with the terms thereof including, without limitation, taking all such actions and doing all such things as shall be

necessary or advisable to enforce to the fullest extent possible for the direct benefit of the Company all rights and benefits in favour of the Company under or pursuant to such agreement.

**12.2** The Company shall not propose, agree to or otherwise give effect to any amendment to, or waiver or forgiveness of its rights or obligations under, the Support Agreement without the approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions other than such amendments, waivers and/or forgiveness as may be necessary or advisable for the purposes of:

- (a) adding to the covenants of the other parties to such agreement for the protection of the Company or the holders of the Exchangeable Shares thereunder;
- (b) making such provisions or modifications not inconsistent with such agreement as may be necessary or desirable with respect to matters or questions arising thereunder which, in the good faith opinion of the Board of Directors, it may be expedient to make, provided that the Board of Directors shall be of the good faith opinion, after consultation with counsel, that such provisions and modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or
- (c) making such changes in or corrections to such agreement which, on the advice of counsel to the Company, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained therein, provided that the Board of Directors shall be of the good faith opinion, after consultation with counsel, that such changes or corrections will not be prejudicial to the interests of the holders of the Exchangeable Shares.

### **ARTICLE 13**

#### **LEGEND; CALL RIGHTS; WITHHOLDING RIGHTS**

**13.1** The certificates evidencing the Exchangeable Shares shall contain or have affixed thereto a legend in form and on terms approved by the Board of Directors, with respect to the Support Agreement, the provisions of the Plan of Arrangement relating to the Liquidation Call Right and the Redemption Call Right, and the Voting and Exchange Trust Agreement (including the provisions with respect to the voting rights, exchange right and automatic exchange thereunder).

**13.2** Each holder of an Exchangeable Share, whether of record or beneficial, by virtue of becoming and being such a holder shall be deemed to acknowledge each of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right, in each case, in favour of NPS Holdings, and the overriding nature thereof in connection with the liquidation, dissolution or winding-up of the Company or the retraction or redemption of Exchangeable Shares, as the case may be, and to be bound thereby in favour of NPS Holdings as therein provided.

13.3 The Company, NPS Holdings, NPS and the Trustee shall be entitled to deduct and withhold from any dividend or consideration otherwise payable to any holder of Exchangeable Shares such amounts as the Company, NPS Holdings, NPS or the Trustee is required or permitted to deduct and withhold with respect to such payment under the *Income Tax Act* (Canada), the United States *Internal Revenue Code of 1986* or any provision of provincial, state, local or foreign tax law, in each case, as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. To the extent that the amount so required or permitted to be deducted or withheld from any payment to a holder exceeds the cash portion of the consideration otherwise payable to the holder, the Company, NPS Holdings, NPS and the Trustee are hereby authorized to sell or otherwise dispose of such portion of the consideration as is necessary to provide sufficient funds to the Company, NPS Holdings, NPS or the Trustee, as the case may be, to enable it to comply with such deduction or withholding requirement and the Company, NPS Holdings, NPS or the Trustee shall notify the holder thereof and remit any unapplied balance of the net proceeds of such sale.

#### ARTICLE 14 NOTICES

14.1 Any notice, request or other communication to be given to the Company by a holder of Exchangeable Shares shall be in writing and shall be valid and effective if given by mail (postage prepaid) or by telecopy or by delivery to the registered office of the Company and addressed to the attention of the President of the Company. Any such notice, request or other communication, if given by mail, telecopy or delivery, shall only be deemed to have been given and received upon actual receipt thereof by the Company.

14.2 Any presentation and surrender by a holder of Exchangeable Shares to the Company or the Trustee of certificates representing Exchangeable Shares in connection with the liquidation, dissolution or winding-up of the Company or the retraction or redemption of Exchangeable Shares shall be made by registered mail (postage prepaid) or by delivery to the registered office of the Company or to such office of the Trustee as may be specified by the Company, in each case, addressed to the attention of the President of the Company. Any such presentation and surrender of certificates shall only be deemed to have been made and to be effective upon actual receipt thereof by the Company or the Trustee, as the case may be. Any such presentation and surrender of certificates made by registered mail shall be at the sole risk of the holder mailing the same.

14.3 Any notice, request or other communication to be given to a holder of Exchangeable Shares by or on behalf of the Company shall be in writing and shall be valid and effective if given by mail (postage prepaid) or by delivery to the address of the holder recorded in the register of members of the Company or, in the event of the address of any such holder not being so recorded, then at the last known address of such holder. Any such notice, request or

other communication, if given by mail, shall be deemed to have been given and received on the third Business Day following the date of mailing and, if given by delivery, shall be deemed to have been given and received on the date of delivery. Accidental failure or omission to give any notice, request or other communication to one or more holders of Exchangeable Shares shall not invalidate or otherwise alter or affect any action or proceeding to be taken by the Company pursuant thereto.

## SCHEDULE A

### RETRACTION REQUEST

#### [TO BE PRINTED ON EXCHANGEABLE SHARE CERTIFICATES]

To NPS Allelix Inc. ("NPS Allelix Inc.") and NPS Holdings Company ("NPS Holdings")

This notice is given pursuant to Article 6 of the provisions (the "Share Provisions") attaching to the Exchangeable Shares of NPS Allelix Inc. represented by this certificate and all capitalized words and expressions used in this notice that are defined in the Share Provisions have the meanings ascribed to such words and expressions in such Share Provisions.

The undersigned hereby notifies NPS Allelix Inc. that, subject to the Retraction Call Right referred to below, the undersigned desires to have NPS Allelix Inc. redeem in accordance with Article 6 of the Share Provisions:

- ☐ all share(s) represented by this certificate; or
- ☐ \_\_\_\_\_ share(s) only represented by this certificate.

The undersigned hereby notifies NPS Allelix Inc. that the Retraction Date shall be \_\_\_\_\_

NOTE: The Retraction Date must be a Business Day and must not be less than 10 Business Days nor more than 15 Business Days after the date upon which this notice is received by NPS Allelix Inc.. If no such Business Day is specified above, the Retraction Date shall be deemed to be the 15<sup>th</sup> Business Day after the date on which this notice is received by NPS Allelix Inc..

The undersigned acknowledges the overriding Retraction Call Right of NPS Holdings to purchase all but not less than all the Retracted Shares from the undersigned and that this notice is and shall be deemed to be a revocable offer by the undersigned to sell the Retracted Shares to NPS Holdings in accordance with the Retraction Call Right on the Retraction Date for the Purchase Price and on the other terms and conditions set out in Section 6.3 of the Share Provisions. This Retraction Request, and this offer to sell the Retracted Shares to NPS Holdings, may be revoked and withdrawn by the undersigned only by notice in writing given to NPS Allelix Inc. at any time before the close of business on the Business Day immediately preceding the Retraction Date.

The undersigned acknowledges that if, as a result of solvency provisions of applicable law, NPS Allelix Inc. is unable to redeem all Retracted Shares, the undersigned will be deemed to have exercised the Exchange Right (as defined in the Voting and Exchange Trust Agreement) so as to require NPS to purchase the unredeemed Retracted Shares.

The undersigned hereby represents and warrants to NPS Holdings and NPS Allelix Inc. that the undersigned:

☐ is

(select one)

☐ is not

a non-resident of Canada for purposes of the *Income Tax Act* (Canada). **The undersigned acknowledges that in the absence of an indication that the undersigned is not a non-resident of Canada, withholding on account of Canadian tax may be made from amounts payable to the undersigned on the redemption or purchase of the Retracted Shares.**

The undersigned hereby represents and warrants to NPS Holdings and NPS Allelix Inc. that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by NPS Holdings or NPS Allelix Inc., as the case may be, free and clear of all liens, claims and encumbrances.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Shareholder)

\_\_\_\_\_  
(Guarantee of Signature)

- ☐ Please check box if the securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares are to be held for pick-up by the shareholder from the transfer agent acting in its capacity as trustee under the Voting and Exchange Trust Agreement (the "**Transfer Agent**"), failing which the securities and any cheque(s) will be mailed to the last address of the shareholder as it appears on the register.

NOTE: This panel must be completed and this certificate, together with such additional documents as the Transfer Agent may require, must be deposited with the Transfer Agent. The securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares will be issued and registered in, and made payable to, respectively, the name of the shareholder as it appears on the register of NPS Allelix Inc. and the securities and any cheque(s) resulting from such retraction or purchase will be delivered to such shareholder as indicated above, unless the form appearing immediately below is duly completed.

Date: \_\_\_\_\_



Name of Person in Whose Name Securities or Cheque(s)  
Are to be Registered, Issued or Delivered (please print): \_\_\_\_\_

Street Address or P.O. Box: \_\_\_\_\_

Signature of Shareholder: \_\_\_\_\_

City, Province and Postal Code: \_\_\_\_\_

Signature Guaranteed by: \_\_\_\_\_

NOTE: If this Retraction Request is for less than all of the shares represented by this certificate, a certificate representing the remaining share(s) of NPS Allelix Inc. represented by this certificate will be issued and registered in the name of the shareholder as it appears on the register of NPS Allelix Inc., unless the Share Transfer Power on the share certificate is duly completed in respect of such share(s).

**APPENDIX II**  
**TO THE PLAN OF ARRANGEMENT**  
**PROVISIONS ATTACHING TO THE**  
**PREFERRED SHARE, SERIES 1 SHARES**

The first series of Preferred Shares shall consist of One Thousand (1,000) Preferred Shares which shall be designated as Preferred Share, Series 1 shares (the "Series 1 Shares") and shall, in addition to and subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares as a class, have attached thereto and be subject to the rights, privileges, restrictions and conditions as set forth below (collectively, the "Series 1 Share Provisions"):

1. Exchange of Series 1 Shares.

- (a) Each Series 1 Share shall automatically be exchanged for fully paid and non-assessable common shares in the capital of NPS Pharmaceuticals, Inc. ("NPS Common Shares") at the Exchange Rate (as defined below), on April 30, 2000 (the "Exchange Date") and each Series 1 Share shall have a value of U.S.\$2,000 (the "Stated Value") for the purpose of such exchange.
- (b) For purposes hereof, the following terms have the following meanings:
  - (i) "Current Market Price" means, in respect of a NPS Common Share on any date, the average of the closing bid and ask prices of NPS Common Shares during a period of 20 consecutive trading days ending not more than three trading days before such date on the NASDAQ Stock Market, or, if the NPS Common Shares are not then quoted on the NASDAQ Stock Market, on such other stock exchange or automated quotation system on which the NPS Common Shares are listed or quoted, as the case may be, as may be selected by the board of directors of the Corporation for such purpose; provided however, that if in the opinion of the board of directors of the Corporation the public distribution or trading activity of NPS Common Shares during such period does not create a market which reflects the fair market value of a NPS Common Share, then the Current Market Price of a NPS Common Share shall be determined by the board of directors of the Corporation, in good faith and in its sole discretion, and provided further that any such selection, opinion or determination by the board of directors of the Corporation shall be conclusive and binding;

Such dividends shall be paid out of money, assets or property of the Company properly applicable to the payment of dividends, or out of authorized but unissued shares of the Company, as applicable.

**3.2** Cheques of the Company payable at par at any branch of the bankers of the Company shall be issued in respect of any cash dividends contemplated by Section 3.1 (a) hereof and the sending of such a cheque to each holder of an Exchangeable Share shall satisfy the cash dividend represented thereby unless the cheque is not paid on presentation. Certificates registered in the name of the registered holder of Exchangeable Shares shall be issued or transferred in respect of any stock dividends contemplated by Section 3.1 (b) hereof and the sending of such a certificate to each holder of an Exchangeable Share shall satisfy the stock dividend represented thereby. Such other type and amount of property in respect of any dividends contemplated by Section 3.1 (c) hereof shall be issued, distributed or transferred by the Company in such manner as it shall determine and the issuance, distribution or transfer thereof by the Company to each holder of an Exchangeable Share shall satisfy the dividend represented thereby. No holder of an Exchangeable Share shall be entitled to recover by action or other legal process against the Company any dividend that is represented by a cheque that has not been duly presented to the Company's bankers for payment or that otherwise remains unclaimed for a period of six years from the date on which such dividend was payable.

**3.3** The record date for the determination of the holders of Exchangeable Shares entitled to receive payment of, and the payment date for, any dividend declared on the Exchangeable Shares under Section 3.1 hereof shall be the same dates as the record date and payment date, respectively, for the corresponding dividend declared on the NPS Common Shares.

**3.4** If on any payment date for any dividends declared on the Exchangeable Shares under Section 3.1 hereof the dividends are not paid in full on all of the Exchangeable Shares then outstanding, any such dividends that remain unpaid shall be paid on a subsequent date or dates determined by the Board of Directors on which the Company shall have sufficient money, assets or property properly applicable to the payment of such dividends.

**3.5** The Board of Directors shall determine, in good faith and in its sole discretion, economic equivalence for the purposes of Section 3.1 hereof, and each such determination shall be conclusive and binding on the Company and its shareholders. In making each such determination, the following factors shall, without excluding other factors determined by the Board of Directors to be relevant, be considered by the Board of Directors:

- (a) in the case of any stock dividend or other distribution payable in NPS Common Shares, the number of such shares issued in proportion to the number of NPS Common Shares previously outstanding;
- (b) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase NPS Common Shares (or securities exchangeable for or

convertible into or carrying rights to acquire NPS Common Shares), the relationship between the exercise price of each such right, option or warrant and the Current Market Price;

- (c) in the case of the issuance or distribution of any other form of property (including without limitation any shares or securities of NPS of any class other than NPS Common Shares, any rights, options or warrants other than those referred to in Section 3.5(b) above, any evidences of indebtedness of NPS or any assets of NPS) the relationship between the fair market value (as determined by the Board of Directors in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding NPS Common Share and the Current Market Price; and
- (d) in all such cases, the general taxation consequences of the relevant event to holders of Exchangeable Shares to the extent that such consequences may differ from the taxation consequences to holders of NPS Common Shares as a result of differences between taxation laws of Canada and the United States (except for any differing consequences arising as a result of differing marginal taxation rates and without regard to the individual circumstances of holders of Exchangeable Shares).

#### **ARTICLE 4 CERTAIN RESTRICTIONS**

**4.1** So long as any of the Exchangeable Shares are outstanding, the Company shall not at any time without, but may at any time with, the approval of the holders of the Exchangeable Shares given as specified in Section 10.2 of these share provisions:

- (a) pay any dividends on the Common Shares or any other shares ranking junior to the Exchangeable Shares, other than stock dividends payable in Common Shares or any such other shares ranking junior to the Exchangeable Shares, as the case may be;
- (b) redeem or purchase or make any capital distribution in respect of Common Shares or any other shares ranking junior to the Exchangeable Shares;
- (c) redeem or purchase any other shares of the Company ranking equally with the Exchangeable Shares with respect to the payment of dividends or on any liquidation distribution; or
- (d) except pursuant to and in accordance with the terms of the Allelix Options, the Allelix Warrants and the Allelix Preferred Shares, issue any Exchangeable Shares or any other shares of the Company ranking equally with, or superior to, the Exchangeable Shares other than by way of stock dividends to the holders of such Exchangeable Shares.

**"NPS Elected Share"** means any Allelix Common Share (other than an Allelix Common Share held by NPS or an affiliate thereof) held by a Canadian Resident that the holder thereof shall have elected, in a duly completed Letter of Transmittal and Election Form deposited with the Depositary no later than the Election Deadline, to transfer to NPS Allelix Inc. under the Arrangement for a fraction of a NPS Common Share equal to the Exchange Ratio, or that is deemed to be an NPS Elected Share pursuant to Sections 2.2(c) or 2.3(a);

**"NPS Holdings"** means NPS Holdings Company, an unlimited liability company formed under the *Companies Act* (Nova Scotia) as a wholly-owned subsidiary of NPS;

**"NPS Trading Price"** means the average of the bid and ask prices of NPS Common Shares on Nasdaq during a period of twenty consecutive trading days ending on the Business Day immediately preceding the Effective Date;

**"OBCA"** means the *Business Corporations Act* (Ontario), as amended;

**"Person"** includes any individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, Government Entity, syndicate or other entity, whether or not having legal status;

**"Preference Shares"** means the preference shares in the capital of NPS Allelix Inc. having substantially the rights, privileges, restrictions and conditions set forth in Appendix II hereto;

**"Redemption Call Purchase Price"** has the meaning ascribed thereto in Section 5.2(a);

**"Redemption Call Right"** has the meaning ascribed thereto in Section 5.2(a);

**"Redemption Date"** has the meaning ascribed thereto in the Exchangeable Share Provisions;

**"Special Voting Share"** means the share of NPS Special Voting Preferred Stock having substantially the rights, privileges, restrictions and conditions described in the Voting and Exchange Trust Agreement;

**"Transfer Agent"** means the transfer agent to be chosen by NPS and Allelix to act as transfer agent of the Exchangeable Shares;

**"Trustee"** means the trustee to be chosen by NPS and Allelix to act as trustee under the Voting and Exchange Trust Agreement, being a corporation organized and existing under the laws of Canada and authorized to carry on the business of a trust company in all the provinces of Canada, and any successor trustee appointed under the Voting and Exchange Trust Agreement;

**"Voting and Exchange Trust Agreement"** means an agreement to be made among NPS, NPS Allelix Inc. and the Trustee in connection with the Plan of Arrangement;

**"1380390"** means 1380390 Ontario Inc., a company incorporated under the OBCA as a wholly-owned subsidiary of Allelix.

## **1.2 Sections and Headings**

The division of this Plan of Arrangement into sections and the insertion of headings are for reference purposes only and shall not affect the interpretation of this Plan of Arrangement. Unless otherwise indicated, any reference in this Plan of Arrangement to a section or an appendix refers to the specified section of or appendix to this Plan of Arrangement.

## **1.3 Number, Gender and Persons**

In this Plan of Arrangement, unless the context otherwise requires, words importing the singular number include the plural and vice versa and words importing any gender include all genders.

# **ARTICLE 2 ARRANGEMENT**

## **2.1 Binding Effect**

This Plan of Arrangement will become effective at, and be binding at and after, the Effective Time on (i) Allelix and 1380390, (ii) NPS, NPS Holdings and NPS Allelix Inc., (iii) all holders of Allelix Common Shares, (iv) all holders of Allelix Preferred Shares, (v) all holders of Exchangeable Shares, and (vi) all holders of Allelix Options and Allelix Warrants.

## **2.2 Arrangement**

Commencing at the Effective Time, the following shall occur and shall be deemed to occur in the following order without any further act or formality:

- (a) each NPS Elected Share will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable NPS Common Share equal to the Exchange Ratio, and the name of each such holder will be removed from the register of holders of Allelix Common Shares and added to the register of holders of NPS Common Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;
- (b) each Exchangeable Elected Share will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable Exchangeable Share equal to the Exchange Ratio, and the name of each such holder will be removed from the

**"Dividend Amount"** means the amount of all declared and unpaid dividends on an Exchangeable Share held by a holder on any dividend record date which occurred prior to the date of purchase or redemption of such shares by the Company or NPS Holdings from such holder;

**"Effective Date"** means the date shown on the certificate of arrangement to be issued by the Director under the OBCA giving effect to the Arrangement;

**"Exchangeable Shares"** means the non-voting exchangeable shares in the capital of the Company, having the rights, privileges, restrictions and conditions set forth herein;

**"Governmental Entity"** means any (a) multinational, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau or agency, domestic or foreign, (b) any subdivision, agent, commission, board, or authority of any of the foregoing, or (c) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing;

**"holder"** means, when used with reference to the Exchangeable Shares, the holders of Exchangeable Shares shown from time to time in the register maintained by or on behalf of the Company in respect of the Exchangeable Shares;

**"Liquidation Amount"** has the meaning ascribed thereto in Section 5.1 of these share provisions;

**"Liquidation Call Right"** has the meaning ascribed thereto in the Plan of Arrangement;

**"Liquidation Date"** has the meaning ascribed thereto in Section 5.1 of these share provisions;

**"Nasdaq"** means the National Association of Securities Dealers Automated Quotation System;

**"NPS"** means NPS Pharmaceuticals, Inc.;

**"NPS Common Shares"** mean the shares of common stock in the capital of NPS and any other securities into which such shares may be changed;

**"NPS Control Transaction"** means any merger, amalgamation, tender offer, material sale of shares or rights or interests therein or thereto or similar transactions involving NPS, or any proposal to do so;

**"NPS Dividend Declaration Date"** means the date on which the Board of Directors of NPS declares any dividend on the NPS Common Shares;

**"NPS Holdings"** means NPS Holdings Company, an unlimited liability company to be formed under the Act as a wholly-owned subsidiary of NPS;

**"NPS Holdings Call Notice"** has the meaning ascribed thereto in Section 6.3 of these share provisions;

**"OBCA"** means the *Business Corporations Act* (Ontario), as amended;

**"Person"** includes any individual, firm, partnership, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate, corporation, unincorporated association or organization, Governmental Entity, syndicate or other entity, whether or not having legal status;

**"Plan of Arrangement"** means the plan of arrangement substantially in the form and content of Schedule A annexed to the Arrangement Agreement and any amendments or variations thereto made in accordance with Section 9.1 of the Arrangement Agreement or Article 6 of the Plan of Arrangement or made at the direction of the Court in the Final Order;

**"Preference Shares"** means the 100 preference shares in the capital of the Company;

**"Purchase Price"** has the meaning ascribed thereto in Section 6.3 of these share provisions;

**"Redemption Call Purchase Price"** has the meaning ascribed thereto in the Plan of Arrangement;

**"Redemption Call Right"** has the meaning ascribed thereto in the Plan of Arrangement;

**"Redemption Date"** means the date, if any, established by the Board of Directors for the redemption by the Company of all but not less than all of the outstanding Exchangeable Shares pursuant to Article 7 of these share provisions, which date shall be no earlier than December 31, 2004, unless:

- (a) there are fewer than 1,000,000 Exchangeable Shares outstanding (other than Exchangeable Shares held by NPS and its affiliates, and as such number of shares may be adjusted as deemed appropriate by the Board of Directors to give effect to any subdivision or consolidation of or stock dividend on the Exchangeable Shares, any issue or distribution of rights to acquire Exchangeable Shares or securities exchangeable for or convertible into Exchangeable Shares, any issue or distribution of other securities or rights or evidences of indebtedness or assets, or any other capital reorganization or other transaction affecting the Exchangeable Shares), in which case the Board of Directors may accelerate such redemption date to such date prior to December 31, 2004 as it may determine, upon at least 60



days' prior written notice to the registered holders of the Exchangeable Shares and the Trustee;

- (b) a NPS Control Transaction occurs, in which case, provided that the Board of Directors determines, in good faith and in its sole discretion, that it is not reasonably practicable to substantially replicate the terms and conditions of the Exchangeable Shares in connection with such NPS Control Transaction and that the redemption of all but not less than all of the outstanding Exchangeable Shares is necessary to enable the completion of such NPS Control Transaction in accordance with its terms, the Board of Directors may accelerate such redemption date to such date prior to December 31, 2004 as it may determine, upon such number of days' prior written notice to the registered holders of the Exchangeable Shares and the Trustee as the Board of Directors may determine to be reasonably practicable in such circumstances;

provided, however, that the accidental failure or omission to give any notice of redemption under clauses (a) or (b) above to less than 10% of such holders of Exchangeable Shares shall not affect the validity of any such redemption;

**"Redemption Price"** has the meaning ascribed thereto in Section 7.1 of these share provisions;

**"Retracted Shares"** has the meaning ascribed thereto in Section 6.1(a) of these share provisions;

**"Retraction Call Right"** has the meaning ascribed thereto in Section 6.1(c) of these share provisions;

**"Retraction Date"** has the meaning ascribed thereto in Section 6.1(b) of these share provisions;

**"Retraction Price"** has the meaning ascribed thereto in Section 6.1 of these share provisions;

**"Retraction Request"** has the meaning ascribed thereto in Section 6.1 of these share provisions;

**"Securities Act"** means the *Securities Act* (Ontario) and the rules, regulations and policies made thereunder, as now in effect and as they may be amended from time to time prior to the Effective Date;

**"Support Agreement"** means the agreement made among NPS, NPS Holdings and the Company in connection with the Plan of Arrangement;

**"Transfer Agent"** means the transfer agent for the Exchangeable Shares;

**"Trustee"** means the trustee chosen by NPS and Allelix, acting reasonably, to act as trustee under the Voting and Exchange Trust Agreement, being a corporation organized and existing under the laws of Canada and authorized to carry on the business of a trust company in all the provinces of Canada, and any successor trustee appointed under the Voting and Exchange Trust Agreement;

**"Voting and Exchange Trust Agreement"** means the agreement made between NPS, the Company and the Trustee in connection with the Plan of Arrangement.

## **ARTICLE 2 RANKING OF EXCHANGEABLE SHARES**

**2.1** The Exchangeable Shares shall be entitled to a preference over the Common Shares and any other shares ranking junior to the Exchangeable Shares, but shall rank junior to the Preference Shares, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary, or any other distribution of the assets of the Company, among its shareholders for the purpose of winding up its affairs.

## **ARTICLE 3 DIVIDENDS**

**3.1** A holder of an Exchangeable Share shall be entitled to receive and the Board of Directors shall, subject to applicable law, on each NPS Dividend Declaration Date, declare a dividend on each Exchangeable Share:

- (a) in the case of a cash dividend declared on the NPS Common Shares, in an amount in cash for each Exchangeable Share in U.S. dollars, or the Canadian Dollar Equivalent thereof on the NPS Dividend Declaration Date, in each case, corresponding to the cash dividend declared on each NPS Common Share;
- (b) in the case of a stock dividend declared on the NPS Common Shares to be paid in NPS Common Shares by the issue or transfer by the Company of such number of Exchangeable Shares for each Exchangeable Share as is equal to the number of NPS Common Shares to be paid on each NPS Common Share; or
- (c) in the case of a dividend declared on the NPS Common Shares in property other than cash or NPS Common Shares, in such type and amount of property for each Exchangeable Share as is the same as or economically equivalent to (to be determined by the Board of Directors as contemplated by Section 3.5 hereof) the type and amount of property declared as a dividend on each NPS Common Share.

register of holders of Allelix Common Shares and added to the register of holders of Exchangeable Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;

- (c) each Allelix Common Share in respect of which a duly completed Letter of Transmittal and Election Form has not been deposited with the Depositary on or prior to the Election Deadline (other than (i) Allelix Common Shares held by Dissenting Shareholders who are ultimately entitled to be paid the fair value of the Allelix Common Shares held by them and (ii) Allelix Common Shares held by NPS or any affiliate thereof which shall not be exchanged under this Arrangement and shall remain outstanding as Allelix Common Shares held by NPS or any affiliate thereof), (A) in the case of a holder of Allelix Common Shares whose address as shown in the register of Allelix Common Shares as of the close of business (Toronto time) on the day preceding the Effective Date is in Canada will be deemed to be an Exchangeable Elected Share and will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for that number of fully paid and non-assessable Exchangeable Shares equal to the Exchange Ratio, and the name of each such holder of Allelix Common Shares will be removed from the register of holders of Allelix Common Shares and added to the register of holders of Exchangeable Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof, and (B) in the case of a holder of Allelix Common Shares whose address as shown in the register of Allelix Common Shares as of the close of business (Toronto time) on the day preceding the Effective Date is not in Canada will be deemed to be a NPS Elected Share and will be transferred by the holder thereof, without any act or formality on its part, to NPS Allelix Inc. in exchange for a fraction of a fully-paid and non-assessable NPS Common Share equal to the Exchange Ratio, and the name of each such holder will be removed from the register of holders of Allelix Common Shares and added to the register of holders of NPS Common Shares and NPS Allelix Inc. will be recorded as the registered holder of such Allelix Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof;
- (d) in accordance with the terms of the Allelix Warrants, after the Effective Time, a holder of Allelix Warrants shall be entitled, upon the exercise of such warrants, to receive in lieu of the number of Allelix Common Shares to which such holder was theretofore entitled to receive upon such exercise, that aggregate number of Exchangeable Shares or NPS Common Shares, as applicable, that such holder would have been entitled to receive under the Plan of Arrangement if such holder had been the registered holder of that number of Allelix Common Shares that such holder was theretofore entitled to receive if all such holder's Allelix Warrants had been exercised immediately prior to the Effective Time. Each holder of Allelix Warrants who is a Canadian Resident will be entitled to receive

Exchangeable Shares and each holder of Allelix Warrants who is not a Canadian Resident will be entitled to receive NPS Common Shares;

- (e) in accordance with the terms of the Allelix Options, after the Effective Time, a holder of Allelix Options shall be entitled, upon the exercise of such options, to receive in lieu of the number of Allelix Common Shares to which such holder was theretofore entitled to receive upon such exercise, that aggregate number of NPS Common Shares that such holder would have been entitled to receive under the Plan of Arrangement if such holder had been the registered holder of that number of Allelix Common Shares that such holder was theretofore entitled to receive if all such holder's Allelix Options had been exercised immediately prior to the Effective Time;
- (f) the Allelix Preferred Shares shall, in addition to and subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares as a Class, have attached thereto, and be subject to, the rights, privileges, restrictions and conditions set forth in Appendix II;
- (g) NPS shall issue to and deposit with the Trustee the Special Voting Share, in consideration of the payment to NPS of U.S. \$1, to be thereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the holders of the Exchangeable Shares in accordance with the Voting and Exchange Trust Agreement;
- (h) the right and obligation of Johnson & Johnson Development Corporation ("J&J") (or any successor) to purchase Allelix Common Shares pursuant to section 1.2 of that certain stock purchase agreement dated October 30, 1998 as amended, between Allelix and J&J shall be deemed to be and shall become the right and obligation of J&J (or any successor) to purchase, on April 30, 2000, that number of NPS Common Shares determined by dividing U.S.\$2,000,000 by the Current Market Price of the NPS Common Shares (which in any event shall not be more than U.S.\$27.79), without any further act or formality on the part of the parties, all as more specifically provided in the Stock Purchase Agreement which shall remain in full force and effect except as amended pursuant to this Plan of Arrangement; and
- (i) Allelix and 1380390 shall amalgamate (the "Amalgamation") and continue as one corporation under the OBCA ("Amalco"), with the effect described below unless and until otherwise determined in the manner required by law or by Amalco, its directors or shareholders, and the following provisions shall apply:
  - (i) *Name.* The name of Amalco shall be NPS Allelix Corp.;
  - (ii) *Cancellation of Shares.* All of the outstanding shares in the capital of 1380390 shall be cancelled without any repayment of capital in respect thereof;

**APPENDIX III  
TO THE PLAN OF ARRANGEMENT  
PROVISIONS ATTACHING TO THE  
PREFERRED SHARES AND COMMON SHARES OF  
NPS ALLELIX CORP.**

**1. Preferred Shares**

**1.1 Directors' Right to Issue in One or More Series**

Preferred Shares may at any time or from time to time be issued in one or more series. Prior to the issue of the shares of any such series, the directors shall, subject to the limitations set out below, fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of such series including, without limitation:

- (a) the rate, amount or method of calculation of dividends, if any, and whether the same are subject to adjustments;
- (b) whether such dividends are cumulative, partly cumulative or non-cumulative;
- (c) the dates, manner and currency of payments of dividends and the dates from which dividends accrue or become payable;
- (d) if redeemable or purchasable, the redemption or purchase prices and the terms and conditions of redemption or purchase, with or without provision for sinking or similar funds;
- (e) any conversion, exchange or reclassification rights; and
- (f) any other rights, privileges, restrictions and conditions not inconsistent with these provisions;

the whole subject to the receipt by the Director under the *Business Corporations Act*, R.S.O. 1990, c.B.16 (the "Act") of articles of amendment designating and fixing the number of Preferred Shares in such series and setting forth the rights, privileges, restrictions and conditions attaching thereto and the issue by him of a certificate of amendment with respect thereto.

**1.2 Ranking of Preferred Shares**

The Preferred Shares of each series shall, with respect to the payment of dividends and the distribution of assets in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or

involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, rank on parity with the Preferred Shares of every other series and be entitled to preference over the Common and the shares of any other class ranking junior to the Preferred Shares. The Preferred Shares of any series shall also be entitled to such other preferences, not inconsistent with these provisions, over the Common and the shares of any other class ranking junior to the Preferred Shares, as may be fixed in accordance with Section 1.1.

### **1.3 Approval of Holders of Preferred Shares**

The approval of the holders of the Preferred Shares as a class, as to any matters referred to in these provisions or required by law may be given as specified below:

- (a) Any approval given by the holders of Preferred Shares shall be deemed to have been sufficiently given if it shall have been given in writing by the holders of all of the outstanding Preferred Shares or by a resolution passed at a meeting of holders of Preferred Shares duly called and held for such purpose upon not less than twenty-one days' notice at which the holders of at least a majority of the outstanding Preferred Shares are present or represented by proxy and carried by the affirmative vote of not less than  $66\frac{2}{3}\%$  of the votes cast at such meeting. If at any such meeting the holders of a majority of the outstanding Preferred Shares are not present or represented by proxy within one-half hour after the time appointed for such meeting, then the meeting shall be adjourned to such date not less than fifteen days thereafter and to such time and place as may be designated by the chairman of the meeting and not less than ten days' written notice shall be given of such adjourned meeting but it shall not be necessary in such notice to specify the purpose for which the meeting was originally called. At such adjourned meeting the holders of Preferred Shares present or represented by proxy shall form a quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than  $66\frac{2}{3}\%$  of the votes cast at such meeting shall constitute the approval of the holders of the Preferred Shares.
- (b) On every poll taken at any such meeting each holder of Preferred Shares shall be entitled to one vote in respect of each Preferred Share held. Subject to the foregoing, the formalities to be observed with respect to the giving or waiving of notice of any such meeting and the conduct thereof shall be those from time to time prescribed in the Act

and the by-laws of the Corporation with respect to meetings of shareholders.

#### **1.4 Voting Rights**

The holders of the Preferred Shares are not entitled to receive notice of, to attend nor to vote at any meeting of shareholders of the Corporation, except as provided by law or in accordance with any voting rights which may from time to time be attached to any series of Preferred Shares.

### **2. Preferred Share, Series 1 Shares**

The first series of Preferred Shares shall consist of One Thousand (1,000) Preferred Shares which shall be designated as Preferred Share, Series 1 shares (the "Series 1 Shares") and shall, in addition to and subject to the rights, privileges, restrictions and conditions attaching to the Preferred Shares as a class, have attached thereto and be subject to the rights, privileges, restrictions and conditions as set forth below (collectively, the "Series 1 Share Provisions"):

#### **2.1 Exchange of Series 1 Shares**

- (a) Each Series 1 Share shall automatically be exchanged for fully paid and non-assessable common shares in the capital of NPS Pharmaceuticals, Inc. ("NPS Common Shares") at the Exchange Rate (as defined below), on April 30, 2000 (the "Exchange Date") and each Series 1 Share shall have a value of U.S.\$2,000 (the "Stated Value") for the purpose of such exchange.
- (b) For purposes hereof, the following terms have the following meanings:
  - (i) "Current Market Price" means, in respect of a NPS Common Share on any date, the average of the closing bid and ask prices of NPS Common Shares during a period of 20 consecutive trading days ending not more than three trading days before such date on the NASDAQ Stock Market, or, if the NPS Common Shares are not then quoted on the NASDAQ Stock Market, on such other stock exchange or automated quotation system on which the NPS Common Shares are listed or quoted, as the case may be, as may be selected by the board of directors of the Corporation for such purpose; provided however, that if in the opinion of the board of directors of the Corporation the public distribution or trading activity of NPS Common Shares during such period does not create a market which reflects the fair market value of a NPS Common Share, then the Current

Market Price of a NPS Common Share shall be determined by the board of directors of the Corporation, in good faith and in its sole discretion, and provided further that any such selection, opinion or determination by the board of directors of the Corporation shall be conclusive and binding;

- (ii) "Exchange Price" means 80% of the Current Market Price of the NPS Common Shares, provided that if the Exchange Price is (i) greater than US\$27.79 then the Exchange Price shall be US\$27.79 or (iii) less than United States Dollar Equivalent of Cdn.\$10.38 (the "Floor Price"), then the Exchange Price shall be the United States Dollar Equivalent of the Floor Price;
- (iii) "Exchange Rate" means the number of NPS Common Shares per Series 1 Share to be issued upon exchange of each Series 1 Share, which number shall be equal to the amount determined by dividing the Stated Value by the Exchange Price, rounded to nearest 1/10,000<sup>th</sup>; and
- (iv) "United States Dollar Equivalent" means, in respect of the Floor Price, the product obtained by multiplying (a) the Floor Price by (b) the average noon buying rate in the City of New York for cable transfers in Canadian dollars stated in United States dollars as certified for customs purposes for the twenty (20) business days preceding the Exchange Date.
- (c) The aggregate number of NPS Common Shares issuable to a holder of Series 1 Shares on the exchange of the Series 1 Shares shall be rounded down to the nearest whole number. The Corporation shall not deliver any fraction of a NPS Common Share upon the exchange of the Series 1 Shares or pay any cash in lieu therefor.
- (d) In the event the NPS Common Shares are at any time subdivided, consolidated or changed into a greater or lesser number of shares of the same or another class or series, an appropriate adjustment shall be made to the method for determining the Exchange Price so as to maintain the relative rights of the holders of Series 1 Shares.
- (e) Whenever the Exchange Price shall be adjusted pursuant to this Section 2.1, the Corporation shall forthwith deliver to the holders of Series 1 Shares a certificate signed by an officer of the Corporation, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the new Exchange Price terms.



## 2.2 Exchange Procedure

- (a) Upon exchange, the Corporation shall send a written notice to each registered holder of Series 1 Shares setting out the Exchange Date, Exchange Rate, Exchange Price and the number of NPS Common Shares to which such holder is entitled. On presentation and surrender to the Corporation (or at any office or agency maintained for the transfer of the Series 1 Shares) of the certificates representing Series 1 Shares so exchanged, duly endorsed in blank for transfer or accompanied by proper instruments of assignment or transfer in blank (a "Holder Exchange Notice"), with signatures guaranteed where required, the holder of such Series 1 Shares shall be entitled, subject to the limitations herein contained, to receive in exchange therefor the certificates representing the NPS Common Shares to which such holder is entitled, which certificates shall be delivered by the second trading day after the date of delivery of the Holder Exchange Notice. A holder of Series 1 Shares shall be deemed to have become the holder of record of the NPS Common Shares to which such holder is entitled, for all purposes, as of the date of delivery of the Holder Exchange Notice.
- (b) From and after the Exchange Date the Series 1 Shares shall be and be deemed to have been exchanged and a holder thereof shall cease to be entitled to any participation in the assets of the Corporation and shall not be entitled to exercise any of such holder's other rights as a shareholder in respect thereof, except to receive the certificates representing the NPS Common Shares to which such holder is entitled.
- (c) The Corporation shall pay any and all taxes which may be imposed upon it with respect to the issuance and delivery of NPS Common Shares upon the exchange of the Series 1 Shares as herein provided.

## 2.3 Voting Rights

Subject to the Act and except as otherwise provided in Section 2.6 below, the holders of Series 1 Shares shall not, as such, be entitled to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting.

## 2.4 Liquidation, Dissolution, Winding Up

In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its

affairs, the holders of the Series 1 Shares shall be entitled to receive in cash out of the assets of the Corporation, whether from capital or from earnings, available for distribution to its shareholders (the "Series 1 Funds"), before any amount shall be paid to the holders of Common Shares, an amount equal to the Stated Value per Series 1 Share, provided that, if the Series 1 Funds are not sufficient to pay the full amount due to the holders of Series 1 Shares and holders of other classes or series of preferred shares of the Corporation that are equal in rank with the Series 1 Shares as to payments of Series 1 Funds (the "Pari Passu Shares"), then each holder of Series 1 Shares and Pari Passu Shares shall share rateably in any distribution of the Corporation's assets in proportion to the respective amounts that would have been payable if such Funds were sufficient to permit payment in full of all such amounts. The purchase or redemption by the Corporation of shares of any class, in any manner permitted by law, shall not, for the purposes hereof, be regarded as liquidation, dissolution or winding up of the Corporation. Neither the consolidation nor merger of the Corporation with or into any other corporation or corporations, nor the sale or transfer by the Corporation of less than substantially all of its assets, shall, for the purposes hereof, be deemed to be a liquidation, dissolution or winding up of the Corporation, provided that such merger, sale or transfer does not amend, alter or change the preferences or rights of the Series 1 Shares or the qualifications or limits thereof in a manner that adversely affects the Series 1 Shares. No holder of Series 1 Shares shall be entitled to receive any amounts with respect thereto upon any liquidation, dissolution or winding up of the Corporation other than the amounts provided for herein.

## **2.5 Series 1 Rank**

All Common Shares shall be of junior rank to all Series 1 Shares in respect to the preferences as to distributions and payments upon the liquidation, dissolution or winding up of the Corporation. The rights of the Common Shares shall be subject to the preferences and relative rights of the Series 1 Shares. The Corporation may authorize and issue additional or other preferred shares which are of equal rank with the Series 1 Shares in respect of the preferences as to distributions and payments upon the liquidation, dissolution or winding up of the Corporation. In the event of the merger or consolidation of the Corporation with or into another corporation, the Series 1 Shares shall maintain their relative powers, designations and preferences provided herein.

## **2.6 Vote to Change the Terms of Series 1 Shares**

The affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the holders of the not less than two-thirds of the

then outstanding Series 1 Shares shall be required to (a) amend, alter, change or repeal any of the Series 1 Share Provisions, (b) authorize, create, or issue any new class or series of shares or any other securities convertible into equity securities of the Corporation having a preference over the Series 1 Shares with respect to redemptions or upon liquidation or dissolution of the Corporation, or (c) reclassify the Common Shares or any other capital of junior rank to the Series 1 Shares into shares of any class or series of capital (i) ranking either as to payment or distribution of assets or redemptions, prior to or on parity with the Series 1 Shares, or (ii) which in any manner adversely affects the holders of Series 1 Shares.

## **2.7 Amendments Upon Exchange of Outstanding Series 1 Shares**

Upon exchange, the Series 1 Shares shall be cancelled and the board of directors of the Corporation may, at its discretion and without a vote of the shareholders of the Corporation, withdraw this designation in its entirety by providing for the filing of the applicable amendment of the Corporation's Articles of Incorporation, and the Series 1 Shares designated hereby shall thereby return to the status of authorized but unissued and undesignated preferred shares of the Corporation.

## **2.8 Business Day**

In the event that any date upon which any action by the Corporation or a holder of Series 1 Shares hereunder, is not a business day (being any day of the year, other than a Saturday, Sunday or any day on which banks are required or are authorized to close in Toronto, Ontario), then such action shall be required to be taken on the next succeeding business day.

## **3. Common Shares**

### **3.1 Voting Rights**

Each holder of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Corporation, except meetings at which only holders of other classes or series of shares are entitled to attend, and at all such meetings shall be entitled to one vote in respect of each Common Share held by such holder.

### **3.2 Dividends**

The holders of Common Shares shall be entitled to receive dividends if and when declared by the directors.

### **3.3 Dissolution**

In the event of any liquidation, dissolution or winding-up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding-up its affairs, the holders of Common Shares shall be entitled, subject to the rights of holders of shares of any class ranking prior to the Common Shares, to receive the remaining property or assets of the Corporation.

**APPENDIX I  
TO THE PLAN OF ARRANGEMENT**

**PROVISIONS ATTACHING TO THE  
EXCHANGEABLE SHARES OF  
NPS ALLELIX INC.**

The Exchangeable Shares shall have the following rights, privileges, restrictions and conditions:

**ARTICLE 1  
INTERPRETATION**

**1.1 For the purposes of these share provisions:**

**"Act"** means the *Nova Scotia Companies Act*

**"affiliate"** has the meaning ascribed thereto in the Securities Act;

**"Allelix"** means Allelix Biopharmaceuticals Inc.;

**"Allelix Common Shares"** means the common shares of Allelix as constituted on the date hereof;

**"Allelix Meeting"** means the special meeting of Allelix Shareholders, as ordered by the Interim Order to consider and, if determined advisable, approve the repricing of certain Allelix Options as approved by the Allelix board of directors on April 15, 1999; to consider, and if determined advisable, approve the continuance of Allelix under the OBCA and to consider, and if determined advisable, approve the Arrangement;

**"Allelix Options"** means the options to purchase Allelix Common Shares issued from time to time prior to the date hereof pursuant to the Allelix Stock Option Plan;

**"Allelix Preferred Shares"** means the preferred shares, series 1 of Allelix as constituted on the date hereof;

**"Allelix Warrants"** means the warrants to purchase Allelix Common Shares issued from time to time prior to the date hereof;

**"Arrangement"** means an arrangement under Section 182 of the OBCA on the terms and subject to the conditions set out in the Plan of Arrangement, to which plan these share provisions are attached as Appendix 1, subject to any amendments or variations thereto made in accordance with Article 6 of the Plan of Arrangement or made at the direction of the Court in the Final Order;

**"Arrangement Agreement"** means the agreement made as of the 27<sup>th</sup> day of September, 1999 between NPS and Allelix, as amended, supplemented and/or restated in accordance

therewith prior to the Effective Date, providing for, among other things, the Arrangement;

**"Board of Directors"** means the Board of Directors of the Company;

**"Business Day"** means any day on which commercial banks are generally open for business in Salt Lake City, Utah and Toronto, Ontario, other than a Saturday, a Sunday or a day observed as a holiday in Salt Lake City, Utah under the laws of the State of Utah or the federal laws of the United States of America or in Toronto, Ontario under the laws of the Province of Ontario or the federal laws of Canada;

**"CBCA"** means the *Canada Business Corporations Act*, as amended;

**"Canadian Dollar Equivalent"** means in respect of an amount expressed in a currency other than Canadian dollars (the **"Foreign Currency Amount"**) at any date the product obtained by multiplying:

- (a) the Foreign Currency Amount by,
- (b) the noon spot exchange rate on such date for such foreign currency expressed in Canadian dollars as reported by the Bank of Canada or, in the event such spot exchange rate is not available, such spot exchange rate on such date for such foreign currency expressed in Canadian dollars as may be deemed by the Board of Directors to be appropriate for such purpose;

**"Common Shares"** means the common shares in the capital of the Company;

**"Company"** means NPS Allelix Inc., a company to be incorporated under the *Nova Scotia Companies Act* as a wholly-owned subsidiary of NPS Holdings;

**"Current Market Price"** means, in respect of a NPS Common Share on any date, the Canadian Dollar Equivalent of the average of the closing bid and asked prices of NPS Common Shares during a period of 20 consecutive trading days ending not more than three trading days before such date on Nasdaq, or, if the NPS Common Shares are not then quoted on Nasdaq, on such other stock exchange or automated quotation system on which the NPS Common Shares are listed or quoted, as the case may be, as may be selected by the Board of Directors for such purpose; provided, however, that if in the opinion of the Board of Directors the public distribution or trading activity of NPS Common Shares during such period does not create a market which reflects the fair market value of an NPS Common Share, then the Current Market Price of a NPS Common Share shall be determined by the Board of Directors, in good faith and in its sole discretion, and provided further that any such selection, opinion or determination by the Board of Directors shall be conclusive and binding;

**"Director"** means the Director appointed pursuant to Section 273 of the OBCA;

Shares to which such holder is entitled. On presentation and surrender to the Corporation (or at any office or agency maintained for the transfer of the Series 1 Shares) of the certificates representing Series 1 Shares so exchanged, duly endorsed in blank for transfer or accompanied by proper instruments of assignment or transfer in blank (a "Holder Exchange Notice"), with signatures guaranteed where required, the holder of such Series 1 Shares shall be entitled, subject to the limitations herein contained, to receive in exchange therefor the certificates representing the NPS Common Shares to which such holder is entitled, which certificates shall be delivered by the second trading day after the date of delivery of the Holder Exchange Notice. A holder of Series 1 Shares shall be deemed to have become the holder of record of the NPS Common Shares to which such holder is entitled, for all purposes, as of the date of delivery of the Holder Exchange Notice.

- (b) From and after the Exchange Date the Series 1 Shares shall be and be deemed to have been exchanged and a holder thereof shall cease to be entitled to any participation in the assets of the Corporation and shall not be entitled to exercise any of such holder's other rights as a shareholder in respect thereof, except to receive the certificates representing the NPS Common Shares to which such holder is entitled.
  - (c) The Corporation shall pay any and all taxes which may be imposed upon it with respect to the issuance and delivery of NPS Common Shares upon the exchange of the Series 1 Shares as herein provided.
3. Voting Rights. Subject to the *Business Corporations Act* (Ontario) and except as otherwise provided in Section 6 below, the holders of Series 1 Shares shall not, as such, be entitled to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting.
4. Liquidation, Dissolution, Winding Up. In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of the Series 1 Shares shall be entitled to receive in cash out of the assets of the Corporation, whether from capital or from earnings, available for distribution to its shareholders (the "Series 1 Funds"), before any amount shall be paid to the holders of Common Shares, an amount equal to the Stated Value per Series 1 Share, provided that, if the Series 1 Funds are not sufficient to pay the full amount due to the holders of Series 1 Shares and holders of other classes or series of preferred shares of the Corporation that are equal in rank with the Series 1 Shares as to payments of Series 1 Funds (the "Pari Passu Shares"),

- (ii) "Exchange Price" means 80% of the Current Market Price of the NPS Common Shares, provided that if the Exchange Price is (i) greater than US\$27.79 then the Exchange Price shall be US\$27.79 or (iii) less than United States Dollar Equivalent of Cdn.\$10.38 (the "Floor Price"), then the Exchange Price shall be the United States Dollar Equivalent of the Floor Price;
  - (iii) "Exchange Rate" means the number of NPS Common Shares per Series 1 Share to be issued upon exchange of each Series 1 Share, which number shall be equal to the amount determined by dividing the Stated Value by the Exchange Price, rounded to nearest 1/10,000<sup>th</sup>; and
  - (iv) "United States Dollar Equivalent" means, in respect of the Floor Price, the product obtained by multiplying (a) the Floor Price by (b) the average noon buying rate in the City of New York for cable transfers in Canadian dollars stated in United States dollars as certified for customs purposes for the twenty (20) business days preceding the Exchange Date.
- (c) The aggregate number of NPS Common Shares issuable to a holder of Series 1 Shares on the exchange of the Series 1 Shares shall be rounded down to the nearest whole number. The Corporation shall not deliver any fraction of a NPS Common Share upon the exchange of the Series 1 Shares or pay any cash in lieu thereof.
  - (d) In the event the NPS Common Shares are at any time subdivided, consolidated or changed into a greater or lesser number of shares of the same or another class or series, an appropriate adjustment shall be made to the method for determining the Exchange Price so as to maintain the relative rights of the holders of Series 1 Shares.
  - (e) Whenever the Exchange Price shall be adjusted pursuant to this Section 1, the Corporation shall forthwith deliver to the holders of Series 1 Shares a certificate signed by an officer of the Corporation, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the new Exchange Price terms.

## 2. Exchange Procedure.

- (a) Upon exchange, the Corporation shall send a written notice to each registered holder of Series 1 Shares setting out the Exchange Date, Exchange Rate, Exchange Price and the number of NPS Common